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RECORDATION NO. 18280-A

FILED 1425

JUN 30 1993 8:50 AM

INTERSTATE COMMERCE COMMISSION

June 30, 1993

JUN 30 1993 8:50 AM

New Recordation No.

INTERSTATE COMMERCE COMMISSION

MOTOR OPERATING UNIT  
JUN 30 8 48 AM '93

Dear Mr. Strickland:

\$32.00 filing fee

On behalf of NationsBanc Leasing Corporation of North Carolina, I submit for filing and recording under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder, executed counterparts a primary document, not previously recorded, entitled Lease Agreement ("Lease") and executed counterparts of a related secondary document, not previously recorded, entitled Lease Supplement ("Supplement"), both dated as of June 30, 1993.

The parties to both the enclosed Lease and Supplement are:

NationsBanc Leasing Corporation — LESSOR  
of North Carolina  
100 North Tryon Street  
Charlotte, NC 28255

Phillips Petroleum Company — LESSEE  
Phillips Building  
Bartlesville, OK 74004

The said Lease and Supplement, among other things, act to lease those certain two hundred and seventy five (275) ACF Model 5711 Center Flow covered hopper cars from the Lessor to the Lessee.

The equipment covered by the instant Lease and the instant Supplement is two hundred and seventy five (275) ACF Model 5711 Center Flow covered hopper cars as identified in Schedule I attached to the Supplement (copy of Schedule I attached hereto).

The Lease should be recorded and filed under the next available new Recordation Number and the Supplement should be recorded as the first subpart thereunder, namely the new Recordation Number -A.

A short summary of the Lease and the Supplement to appear in the ICC Index is as follows:

"Covers 275 PSPX numbered Center Flow covered hopper cars."

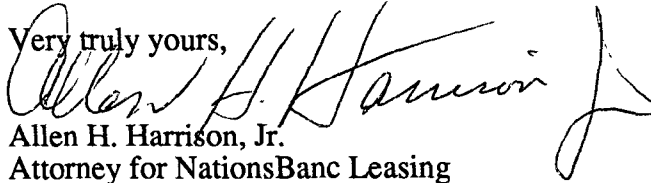
Enclosed is a check in the amount of thirty two dollars (\$32.00) in payment of the filing fees.

*G. B. Harrison*  
*C. Cunningham*

DONELAN, CLEARY, WOOD & MASER, P. C.

Once the filings have been made, please return to bearer the stamped counterpart(s) of the documents not required for filing purposes, together with the fee receipt, the letter from the ICC acknowledging the filings, and the two extra copies of this letter of transmittal.

Very truly yours,



Allen H. Harrison, Jr.  
Attorney for NationsBanc Leasing  
Corporation of North Carolina  
for the purpose of this filing.

Honorable Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423  
Enclosures

BY HAND

8357-020

Schedule 1

Description of Equipment

- 275 - ACF Model 5711, Center Flow® Covered Hopper cars, having a volumetric capacity of 573 cu. ft. equipped with 4 ACF #5235 outlets, 10 each 20" hatches, 100 ton trucks, and lined with Devoe 250 epoxy coating with the following identification numbers:

PSPX6914	PSPX6956	PSPX6998
PSPX6915	PSPX6957	PSPX6999
PSPX6916	PSPX6958	PSPX7000
PSPX6917	PSPX6959	PSPX7001
PSPX6918	PSPX6960	PSPX7002
PSPX6919	PSPX6961	PSPX7003
PSPX6920	PSPX6962	PSPX7004
PSPX6921	PSPX6963	PSPX7005
PSPX6922	PSPX6964	PSPX7006
PSPX6923	PSPX6965	PSPX7007
PSPX6924	PSPX6966	PSPX7008
PSPX6925	PSPX6967	PSPX7009
PSPX6926	PSPX6968	PSPX7010
PSPX6927	PSPX6969	PSPX7011
PSPX6928	PSPX6970	PSPX7012
PSPX6929	PSPX6971	PSPX7013
PSPX6930	PSPX6972	PSPX7014
PSPX6931	PSPX6973	PSPX7015
PSPX6932	PSPX6974	PSPX7016
PSPX6933	PSPX6975	PSPX7017
PSPX6934	PSPX6976	PSPX7018
PSPX6935	PSPX6977	PSPX7019
PSPX6936	PSPX6978	PSPX7020
PSPX6937	PSPX6979	PSPX7021
PSPX6938	PSPX6980	PSPX7022
PSPX6939	PSPX6981	PSPX7023
PSPX6940	PSPX6982	PSPX7024
PSPX6941	PSPX6983	PSPX7025
PSPX6942	PSPX6984	PSPX7026
PSPX6943	PSPX6985	PSPX7027
PSPX6944	PSPX6986	PSPX7028
PSPX6945	PSPX6987	PSPX7029
PSPX6946	PSPX6988	PSPX7030
PSPX6947	PSPX6989	PSPX7031
PSPX6948	PSPX6990	PSPX7032
PSPX6949	PSPX6991	PSPX7033
PSPX6950	PSPX6992	PSPX7034
PSPX6951	PSPX6993	PSPX7035
PSPX6952	PSPX6994	PSPX7036
PSPX6953	PSPX6995	PSPX7037
PSPX6954	PSPX6996	PSPX7038
PSPX6955	PSPX6997	PSPX7039

Schedule 1  
Description of  
Equipment (continued)  
Page 2

PSPX7040	PSPX7090	PSPX7140
PSPX7041	PSPX7091	PSPX7141
PSPX7042	PSPX7092	PSPX7142
PSPX7043	PSPX7093	PSPX7143
PSPX7044	PSPX7094	PSPX7144
PSPX7045	PSPX7095	PSPX7145
PSPX7046	PSPX7096	PSPX7146
PSPX7047	PSPX7097	PSPX7147
PSPX7048	PSPX7098	PSPX7148
PSPX7049	PSPX7099	PSPX7149
PSPX7050	PSPX7100	PSPX7150
PSPX7051	PSPX7101	PSPX7151
PSPX7052	PSPX7102	PSPX7152
PSPX7053	PSPX7103	PSPX7153
PSPX7054	PSPX7104	PSPX7154
PSPX7055	PSPX7105	PSPX7155
PSPX7056	PSPX7106	PSPX7156
PSPX7057	PSPX7107	PSPX7157
PSPX7058	PSPX7108	PSPX7158
PSPX7059	PSPX7109	PSPX7159
PSPX7060	PSPX7110	PSPX7160
PSPX7061	PSPX7111	PSPX7161
PSPX7062	PSPX7112	PSPX7162
PSPX7063	PSPX7113	PSPX7163
PSPX7064	PSPX7114	PSPX7164
PSPX7065	PSPX7115	PSPX7165
PSPX7066	PSPX7116	PSPX7166
PSPX7067	PSPX7117	PSPX7167
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PSPX7069	PSPX7119	PSPX7169
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PSPX7084	PSPX7134	PSPX7184
PSPX7085	PSPX7135	PSPX7185
PSPX7086	PSPX7136	PSPX7186
PSPX7087	PSPX7137	PSPX7187
PSPX7088	PSPX7138	PSPX7188
PSPX7089	PSPX7139	

**Interstate Commerce Commission**  
Washington, D.C. 20423

6/30/93

OFFICE OF THE SECRETARY

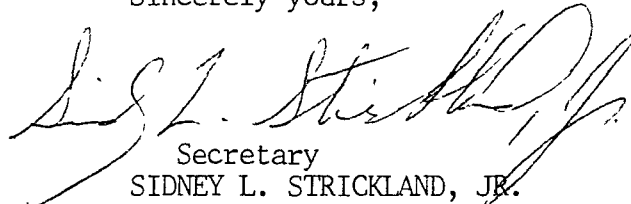
**Allen H Harrison Jr.**  
**Donelan, Cleary, Wood & Maser**  
**1275 K St. N.W. Suite 850**  
**Washington, D.C. 20005**

Dear

**Sir:**

The enclosed document(s) was recorded pursuant to the provisions  
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,  
on **6/30/93** at **8:50am**, and assigned  
recordation number(s). **18280 & 18280-A**

Sincerely yours,



Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

New Member

18280  
RECORDATION NO. FILED 1425

JUN 30 1993 8-50 AM

INTERSTATE COMMERCE COMMISSION

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LEASE AGREEMENT

dated as of June 30, 1993

between

NATIONSBANC LEASING CORPORATION  
OF NORTH CAROLINA,  
Lessor

and

PHILLIPS PETROLEUM COMPANY,  
Lessee

Lease of  
275 Covered Hopper Freight Railcars

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This Lease Agreement has been executed in several counterparts. To the extent, if any, that this Lease Agreement constitutes chattel paper (as such term is defined under the Uniform Commercial Code (or under other Applicable Law) as in effect in any applicable jurisdiction), no security interest in this Lease Agreement may be created through the transfer or possession of any counterpart other than the original counterpart containing the receipt therefor executed by the Lessor on the signature page hereof.

## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. Interpretation . . . . .	1
(a) Definitions . . . . .	1
(b) References . . . . .	1
(c) Headings . . . . .	1
(d) Appendices, Schedules and Exhibits . . . . .	1
SECTION 2. Acceptance Under Lease . . . . .	1
(a) Acceptance and Leasing of Equipment . . . . .	1
(b) Designation of Lessor's Representative for Acceptance of Delivery . . . . .	2
(c) Filing . . . . .	2
SECTION 3. Term; Rent; Net Lease, Etc. . . . .	2
(a) Term . . . . .	2
(b) Basic Rent . . . . .	3
(c) Supplemental Rent . . . . .	3
(d) Adjustments . . . . .	3
(e) Manner of Payment . . . . .	5
(f) Net Lease, etc. . . . .	5
SECTION 4. Renewal . . . . .	6
(a) Renewal . . . . .	6
(b) Rent . . . . .	7
(c) Notice . . . . .	8
(d) Termination Values . . . . .	8
SECTION 5. Representations, Warranties; Quiet Enjoyment; Purchase Agreement . . . . .	8
SECTION 6. Assignments and Subleases; Possession; Operation and Use; Maintenance; and Identification . . . . .	10
(a) Assignment or Sublease by the Lessee . . . . .	10
(b) Possession . . . . .	11
(c) Operation and Use . . . . .	12
(d) Maintenance . . . . .	12
(e) Equipment Identification . . . . .	13
SECTION 7. Inspection . . . . .	13
SECTION 8. Replacement and Ownership of Parts; Alterations, Modifications and Additions . . . . .	14
(a) Replacement of Parts . . . . .	14
(b) Ownership of Parts . . . . .	14
(c) Alterations, Modifications and Additions . . . . .	15

## TABLE OF CONTENTS

	<u>Page</u>
SECTION 9. Event of Loss; Replacement . . . . .	16
(a) Event of Loss . . . . .	16
(b) Non-Insurance Payments Received on Account of an Event of Loss . . . . .	19
(c) Requisition for Use with Respect to Items of Equipment . . . . .	19
SECTION 10. Insurance . . . . .	20
(a) Insurance Requirements. . . . .	20
(b) Compliance with Policies . . . . .	21
(c) Failure to Insure . . . . .	21
(d) Notification of Claim . . . . .	22
(e) Application of Insurance Proceeds . . . . .	22
(f) Certificates . . . . .	23
(g) Copies and Descriptions of Policies; Other Insurance . . . . .	23
(h) Self-Insurance. . . . .	23
SECTION 11. Liens . . . . .	23
SECTION 12. Further Assurances . . . . .	24
SECTION 13. Return of the Equipment . . . . .	25
SECTION 14. Alternatives at the End of the Term; Purchase by Lessee. . . . .	25
(a) Lessee's Alternatives. . . . .	25
(b) Notice . . . . .	26
(c) Purchase Options . . . . .	26
(d) Exercise of Purchase Option . . . . .	26
SECTION 15. Voluntary Termination; Special Termination Event . . . . .	27
(a) Termination by Sale of Equipment. . . . .	27
(b) Payments Due Upon Sale of Equipment. . . . .	28
(c) Preemptive Election by Lessor. . . . .	28
(d) Termination of Lease . . . . .	28
(e) Effect of No Sale to Lessor . . . . .	28
(f) Special Termination Event . . . . .	29
SECTION 16. Events of Default . . . . .	29
SECTION 17. Remedies . . . . .	31
SECTION 18. Lessor's Right to Perform for Lessee . . . . .	34
SECTION 19. Investment of Security Funds . . . . .	35



## TABLE OF CONTENTS

	<u>Page</u>
SECTION 20. Miscellaneous. . . . .	35
(a) Notices . . . . .	35
(b) Counterparts . . . . .	35
(c) Amendments . . . . .	35
(d) Agreement to Lease . . . . .	36
(e) Governing Law . . . . .	36
(f) Benefit and Binding Effect . . . . .	36
(g) Service of Process and Jurisdiction; Waiver of Immunity . . . . .	36
(h) Entire Agreement . . . . .	36
(i) Currency . . . . .	36

Exhibit A - Form of Lease Supplement

Exhibit B - Termination Value Factors

Exhibit C - Rent Schedule

Appendix A - Definitions

This LEASE AGREEMENT (this "Lease") dated as of June 30, 1993, between NATIONSBANC LEASING CORPORATION OF NORTH CAROLINA, a North Carolina corporation, having its principal place of business at 100 North Tryon Street, Charlotte, North Carolina, 28255, as Lessor, and PHILLIPS PETROLEUM COMPANY, a Delaware corporation, having its principal office at Phillips Building, Bartlesville, Oklahoma, 74004, as Lessee.

W I T N E S S E T H :

WHEREAS, Lessee desires to lease from Lessor and Lessor is willing to lease to Lessee the Equipment upon and subject to the terms and conditions of this Lease; and

WHEREAS, Lessee and Lessor intend this Lease to constitute a lease agreement and not a security agreement or conditional sales agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Lessor and Lessee agree as follows:

SECTION 1. Interpretation.

(a) Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in Appendix A.

(b) References. References in this Lease to sections, paragraphs, clauses, appendices, schedules and exhibits are to sections, paragraphs, clauses, appendices, schedules and exhibits in and to this Lease unless otherwise specified.

(c) Headings. The headings of the various sections, paragraphs and clauses of this Lease and the table of contents are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof.

(d) Appendices, Schedules and Exhibits. The appendices, schedules and exhibits are part of this Lease.

SECTION 2. Acceptance Under Lease

(a) Acceptance and Leasing of Equipment. Subject to the terms and conditions set forth herein and in the Participation Agreement, on the Lease Commencement Date Lessor shall lease the Equipment to Lessee, and Lessee shall lease the Equipment from Lessor hereunder, such leasing to be evidenced by the execution by Lessor and Lessee of a Lease Supplement with respect to the Equipment.

(b) Designation of Lessor's Representative for Acceptance of Delivery. Lessor hereby authorizes one or more persons designated by Lessee as the representative or representatives of Lessor, to accept delivery of the Equipment pursuant to the Bill of Sale. Such acceptance of delivery of the Equipment by such authorized representative or representatives on behalf of Lessor shall also, without further act, irrevocably constitute acceptance by Lessee of the Equipment for all purposes of this Lease.

(c) Filing. (i) Prior to the Lease Commencement Date, the Lessor will cause this Lease and Lease Supplement No. 1 to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act (49 U.S.C. § 11303) and in such other places within or without the United States as the Lessor or its special ICC counsel may reasonably request.

(ii) The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by Applicable Law or reasonably requested by the Lessor or its special ICC counsel for the purpose of (x) protecting, preserving and maintaining the Lessor's title to the Equipment and any Item of Equipment in any jurisdiction (including, without limitation, Canada and Mexico and any political subdivisions thereof) in which any Item of Equipment may from time to time be operated, used or located to the satisfaction of the Lessor or its special ICC counsel or (y) carrying out the intentions of this Lease, and in connection with any of the foregoing, Lessee will deliver to the Lessor proof of such filings and an opinion of the Lessee's counsel reasonably satisfactory to the Lessor that such action has been properly taken. Any information relevant to Lessee's obligation hereunder received by Lessor shall be immediately forwarded to Lessee.

(iii) The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action pursuant to Section 2(c)(ii) hereof.

### SECTION 3. Term; Rent; Net Lease, Etc.

(a) Term. Except as otherwise provided herein, the Equipment shall be leased for the "Term," which shall be comprised of the Basic Term and any and all Renewal Terms. The "Basic Term" shall commence on the Lease Commencement Date and end at 12:01 A.M. upon the date (x) which is the twentieth anniversary of the Lease Commencement Date or (y) upon the date of any earlier termination of this Lease according to its terms.

Each Renewal Term shall commence on and continue through such dates as are specified in Section 4 hereof.

(b) Basic Rent. Lessee shall pay, or cause to be paid, Basic Rent for the Equipment on each Basic Rent Payment Date as follows: (i) during the Basic Term, each such installment shall be equal to the amount determined by multiplying Equipment Cost by the applicable Basic Rent Factor set forth opposite such date in Exhibit C hereto, subject to the adjustment, if any, provided for in Section 3(d) hereof and (ii) during any Renewal Term, such Basic Rent as is required to be paid for such Renewal Term pursuant to Section 4 hereof. Basic Rent shall be payable in arrears (allocable to the six month period ending on the day immediately preceding the date such payment is due).

(c) Supplemental Rent. Lessee also shall pay or cause to be paid to Lessor any and all Supplemental Rent promptly as the same shall become due and owing, and in the event of any failure on the part of Lessee to pay any Supplemental Rent, Lessor shall have all rights, powers and remedies provided for herein or in any other Operative Document or by law or equity in the case of nonpayment of Basic Rent. Lessee shall also pay to the Lessor as Supplemental Rent interest at the Overdue Rate on any part of any Rent not paid when due for any period for which the same shall be overdue.

(d) Adjustments. The Basic Rent Factors and the Termination Value Factors shall be appropriately adjusted upward or downward in the manner set forth herein to reflect:

(i) any change in the Code that is enacted or promulgated, as the case may be, during the year in which the Closing Date occurred, which change is effective with respect to the Equipment and the Lessor and has an effect on Lessor's Net Economic Return, including any basis adjustments resulting from enactment of any investment tax credit during the year in which the Closing Date occurs; provided, however, that if and to the extent that Lessor, at any time, becomes entitled to claim, for federal income tax purposes, and is able to realize any benefits of any investment tax credit, for federal income tax purposes, under the Code and the Regulations with respect to the Equipment the Lessee shall have the option to receive a lump sum payment of the ITC Amount (as defined hereunder) from Lessor, in lieu of an adjustment of the Basic Rent and Termination Values under Section 3(d) of this Lease; provided, however, the amount of any payment by the Lessor hereunder shall not be in excess of an amount necessary to preserve Lessor's Net Economic Return and otherwise shall satisfy the provisions of this Section 3(d). The "ITC Amount" for purposes herein shall equal the amount of any tax benefit actually realized by Lessor as a result of any

investment tax credit with respect to the Equipment. Lessor shall (x) pay to Lessee the ITC Amount, within thirty (30) days of its receipt of written notice of Lessee's election to receive such lump-sum payment and (y) provide to Lessee an Officer's Certificate specifying the ITC Amount, which certification shall be deemed conclusive for all purposes of the Operative Documents; provided, further, that, if subsequent to Lessor's payment to Lessee of the ITC Amount, Lessor, for any reason (including, without limitation, the failure to maintain a certain level of investment in property), loses the benefit of, or otherwise must recapture, such investment tax credits, Lessee shall indemnify Lessor and hold Lessor harmless, on an After-Tax Basis, for any such loss of such investment tax credits to the extent that such investment tax credit benefits were paid to the Lessee or reflected in any rent adjustment hereunder; provided that the amount payable hereunder shall be at least sufficient to maintain the Lessor's Net Economic Return. The Lessor shall in good faith use reasonable efforts (in a manner consistent with its overall business and tax interests) to realize and maximize any tax benefits resulting from any investment tax credits with respect to the Equipment;

(ii) the Lease Commencement Date or the Equipment Cost is other than as set forth in the Pricing Assumptions;

(iii) if, on the Lease Commencement Date, the yield to maturity of the 11 5/8%, November, 2004, United States Treasury Note (the "Treasury Note"), is other than the yield to maturity of such Treasury Note listed on December 22, 1992 (the "Rate Setting Date") in the Wall Street Journal (6.98%), then the "Lease Rate Daily (Implicit Cost to Lessee)" set forth in the Pricing Assumptions shall be increased or decreased, as the case may be, by the number of basis points increase or decrease in the yield to maturity of the Treasury Note from the Rate Setting Date to the Lease Commencement Date and the Basic Rent Factors and the Termination Value Factors shall be adjusted accordingly; or

(iv) the termination of the Lease as to any Item of Equipment pursuant to Section 9 hereof (unless replaced pursuant to Section 9(a)(ii) hereof).

All adjustments pursuant to the preceding paragraph shall be made (A) in a manner that (x) maintains the Lessor's Net Economic Return and (y) to the extent possible (but in all events consistent with clause (x)) minimizes Lessee's Net Present Value of Rents, (B) on the basis of the same methodology and assumptions used by the Lessor in determining the Basic Rent Factors and the Termination Value Factors, except as such assumptions previously have been modified or must be modified to

reflect the factors giving rise to such adjustment and (C) in a manner (x) that satisfies the provisions of Revenue Procedure 75-21, Revenue Procedure 75-28 and any other applicable statute, regulations, revenue procedures, revenue rulings or technical information releases relating thereto and (y) to avoid application of Section 467(b)(2) of the Code and any Regulations thereunder or any similar provision of the federal income tax laws; provided that if Lessee believes that such calculations by Lessor are in error, then an independent third party acceptable to Lessor and Lessee shall verify such calculations and Lessor will make available to such verifying party (subject to the execution by such verifying party of a confidentiality agreement reasonably acceptable to Lessor, which agreement shall prohibit disclosure of Lessor's assumptions to any third party, including Lessee) such methodology and assumptions and any changes made hereunder. In the event of such a verification, the determination by such firm shall be final. Lessor will pay the reasonable costs and expenses of the verification if such verification procedure demonstrates that the Lessor's proposed adjustments to Basic Rent and Termination Value were incorrect by more than five percent (5%). In all other cases, such costs and expenses shall be paid by Lessee. Such recalculated Basic Rent Factors and Termination Value Factors shall be set forth in a supplement to this Lease; provided, however, that such adjustment shall be effective regardless of whether such supplement is executed and delivered. Notwithstanding anything herein to the contrary, the parties hereby agree that the sole responsibility of the verifying party shall be to verify the calculations by Lessor and not to interpret the Operative Documents.

(e) Manner of Payment. All Rent payable by Lessee to Lessor hereunder shall be paid by Lessee to Lessor at its principal office as set forth in the first paragraph of this Lease, or to such other address in the United States as Lessor shall specify, by check in Dollars, so that Lessor receives the full amount of such payment no later than 1:00 p.m. New York time on the due dates thereof. If any Rent is due on a day which is not a Business Day, such Rent shall be paid on the next succeeding Business Day with the same effect as if paid on the date when due and without additional interest. All obligations of the Lessee in this Lease shall be done, performed or complied with at the Lessee's sole cost and expense unless otherwise expressly provided herein.

(f) Net Lease, etc. This Lease is a net lease. Lessee acknowledges and agrees that its obligations to pay all Rent due and owing in accordance with the terms hereof shall be absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, (i) any setoff, counterclaim, recoupment, defense or other right which Lessee may have against Lessor, the Seller or any other Person for any reason whatsoever, (ii) any defect in the title,

condition, design, operation or fitness for use of, or any damage to or loss or theft or destruction of, the Equipment, or any interference, interruption or cessation in or prohibition of the use or possession thereof by Lessee or any other Person for any reason whatsoever, including, without limitation, any such interference, interruption, cessation or prohibition resulting from the act of any governmental authority, (iii) any Liens or rights of any Person with respect to the Equipment, (iv) the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease or any other Operative Document or any lack of right, power or authority of Lessor or Lessee to enter into this Lease or such other Operative Document, (v) any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessee or any other Person, (vi) any other cause whether similar or dissimilar to the foregoing, any present or future law notwithstanding, it being the intention of the parties hereto that all Rent payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times provided herein. Such Rent shall not be subject to any abatement and the payments thereof shall not be subject to any setoff or reduction for any reason whatsoever, including any present or future claims of Lessee against Lessor or any other Person under this Lease or otherwise. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise, then, except as otherwise specifically provided herein, Lessee nonetheless agrees to pay to Lessor an amount equal to each Basic Rent and Supplemental Rent payment under Section 3 at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. Lessee hereby waives, and hereby agrees to waive at any future time at the request of Lessor, to the extent now or then permitted by Applicable Law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof (including Sections 9, 14 and 15 hereof). The Lessee shall remain obliged under this Lease in accordance with its terms and the Lessee hereby waives any and all rights now or hereafter conferred by law or otherwise to modify or to avoid strict compliance with its obligations under this Lease. Except to the extent otherwise expressly provided herein, all payments made to the Lessor hereunder as required hereby shall be final and the Lessee shall not seek to recover any such payment or any part thereof for any reason whatsoever, absent manifest error.

#### SECTION 4. Renewal.

(a) Renewal. The Lessee shall have the right to renew this Lease (i) at the end of the Basic Term for the Initial Fixed Rate Renewal Term, (ii) at the end of the Basic Term or any Renewal Term, for a Fair Market Renewal Term, (iii) at the end of

the Initial Fixed Rate Renewal Term, for an additional Fixed Rate Renewal Term or a Fair Market Renewal Term and (iv) at the end of any additional Fixed Rate Renewal Term, for an additional Fixed Rate Renewal Term or a Fair Market Renewal Term; provided that (A) no Fixed Rate Renewal Term may follow a Fair Market Renewal Term, (B) the aggregate (without duplication) of the Basic Term, the Initial Fixed Rate Renewal Term and all additional Fixed Rate Renewal Terms shall not exceed 80% of the total estimated useful life of the Equipment as determined in accordance with the Appraisal Procedure, (C) the reasonable anticipated residual value of the Equipment, as determined in accordance with the Appraisal Procedure, at the end of the Basic Term and each Fixed Rate Renewal Term exercised (determined without regard to inflation or deflation from the Closing Date for the Equipment) is at least equal to 20% of Equipment Cost, (D) the term of any Fair Market Renewal Term shall be one year (or such longer period of time which is a six month integral multiple thereof) unless a shorter term is required to comply with clause (F) of this proviso, (E) the term of any Fixed Rate Renewal Term or the Initial Fixed Rate Renewal Term shall be at least one year (or such longer period of time which is a six month integral multiple thereof) but (in the case of the Initial Fixed Rate Renewal Term) no more than five (5) years, unless a shorter term is required to comply with clause (B) or (C) of this proviso, in which case the Lessee must elect to renew this Lease for such shorter term upon its election to renew this Lease for the Initial Fixed Rate Renewal Term or an additional Fixed Rate Renewal Term, (F) the term of any Fair Market Renewal Term may not extend beyond the total estimated useful life of the Equipment as determined in accordance with the Appraisal Procedure, (G) after the Initial Fixed Rate Renewal Term, Lessee may only elect two (2) additional Fixed Rate Renewal Terms and (H) the aggregate term of all Fixed Rate Renewal Terms may not exceed ten (10) years (or such shorter term necessary to comply with clause (B) or (C) of this proviso). It shall also be a condition to any and all renewals of this Lease for any Renewal Term that no Default or Event of Default shall have occurred and be continuing upon the commencement of such Renewal Term.

(b) Rent. All of the terms and provisions of this Lease shall be applicable during any Renewal Term, except that the Lessee shall pay to the Lessor as Basic Rent (i) in arrears on each Basic Rent Payment Date during the Initial Fixed Rate Renewal Term or any additional Fixed Rate Renewal Term, at a rate equal to 50% of the average of the Basic Rent Factors during the Basic Term (pro rated in the case of a partial rent period of the Initial Fixed Rate Renewal Term or any Fixed Rate Renewal Term) and (ii) in arrears on each Basic Rent Payment Date during any Fair Market Renewal Term, an amount equal to the semiannual installment of the Fair Market Rental Value of the Equipment, as determined in accordance with Section 4(c) hereof (pro rated in the case of a partial rental period).



(c) Notice. (i) If the Lessee elects to renew this Lease for a Renewal Term, the Lessee shall notify the Lessor in writing, at least 180 (but no more than 360) days prior to the expiration date of the Basic Term or the Renewal Term then in effect, of its irrevocable election to renew this Lease for (A) a Fair Market Renewal Term, (B) if available, the Initial Fixed Rate Renewal Term or (C) if available, an additional Fixed Rate Renewal Term, and the Lessee shall, in each case, specify the term of such Renewal Term in compliance with Section 4(a) hereof; provided that if such Appraisal Procedure is not completed prior to the date the Lessee shall be required to give notice of its election to renew this Lease, such notice may be given within 5 days after completion of such Appraisal Procedure, which shall in no event be less than 180 days prior to the expiration of the Basic Term or Renewal Term then in effect.

(ii) In connection with any election by Lessee to renew this Lease for any Renewal Term, Lessee shall initiate the Appraisal Procedure in compliance with the definition of such term as to the items required to be determined for such Renewal Term pursuant to such Procedure.

(d) Termination Values. Promptly after the Lessee's election to renew this Lease pursuant to Section 4(c), Schedule 2 shall be modified by the Lessor in order to provide for Termination Values for the Equipment applicable during the applicable Renewal Term. Such Termination Values shall be reduced on a straight line basis for the remaining useful life of the Equipment (as determined in accordance with the Appraisal Procedure) from their respective levels as of the end of the Basic Term to zero at the end of the estimated useful life of the Equipment.

SECTION 5. Representations, Warranties; Quiet Enjoyment; Purchase Agreement. (a) LESSOR LEASES AND LESSEE TAKES THE EQUIPMENT AND EACH PART THEREOF "AS-IS" AND "WHERE-IS" AND THE LESSOR MAKES NO AND SHALL NOT BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, CONDITION, VALUE, WORKMANSHIP, DESIGN, OPERATION, COMPLIANCE WITH SPECIFICATIONS, CONSTRUCTION, PERFORMANCE OR MERCHANTABILITY, FITNESS OR SUITABILITY FOR USE OR PURPOSE OF THE EQUIPMENT OR ANY PART THEREOF, AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, AS TO THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT OR ANY PART THEREOF OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT OR ANY PART THEREOF. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE EQUIPMENT OR ANY ITEM OF EQUIPMENT THEREOF, WHETHER PATENT OR LATENT, THE LESSOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS

SUBSECTION 5(a) HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, BY THE LESSOR WITH RESPECT TO THE EQUIPMENT OR ANY ITEM OF EQUIPMENT WHETHER ARISING PURSUANT TO THE UCC OR ANY OTHER APPLICABLE LAW, NOW OR HEREAFTER IN EFFECT.

(b) Lessor covenants that during the Term, so long as no Event of Default shall have occurred and be continuing, Lessee's possession, use or quiet enjoyment of the Equipment leased hereunder shall not be interrupted by Lessor or any Person claiming any interest in the Equipment by, through or under Lessor.

(c) (i) If and so long as a Default or an Event of Default shall not have occurred and be continuing and so long as the Equipment remains subject to this Lease, Lessor (1) hereby authorizes Lessee, and authorizes Lessee to authorize similarly any permitted sublessee, to the exclusion of Lessor, to exercise in Lessee's or such sublessee's own name (A) such rights as Lessor may have with respect to the Equipment under any warranty, covenant, representation, service life policy, performance guarantee, indemnity or product support agreement of the Seller or any subcontractor or vendor with respect thereto under the Purchase Agreement and, subject to subparagraphs (ii) and (iii) hereof, to retain any warranty, covenant, representation, service life policy, performance guarantee, indemnity or product support agreement of the Seller or any subcontractor or vendor under the Purchase Agreement and (B) all other rights and powers as Lessor may have under the Purchase Agreement and (2) shall, at Lessee's (or any permitted sublessee's) expense, cooperate with Lessee (or any permitted sublessee) and take such actions as Lessee (or any permitted sublessee) reasonably deems necessary to enable Lessee (or any permitted sublessee) to enforce such rights and claims;

(ii) Notwithstanding anything herein to the contrary, all amounts that the Seller is obligated to pay to Lessee under the Purchase Agreement, including, without limitation, resulting from the enforcement of any warranty, covenant, representation, service life policy, performance guarantee or indemnity thereunder or the enforcement or exercise of any right or power under the Purchase Agreement, shall be paid to Lessee unless (A) such amounts constitute payment for diminution of the residual value of the Equipment and are not used to repair the Equipment, in which case such amounts shall be paid to Lessor or (B) the Seller shall have received written notice from Lessor that a Default or an Event of Default shall have occurred and be continuing, in which case the Seller will, until the Seller has received written notice from Lessor that all such Defaults and Events of Default have been cured or waived, make any and all such payments directly to Lessor to be held for so long as such Default or Event of Default shall be continuing as security for and applied to the obligations of Lessee hereunder and, at such

time as no such Default or Event of Default shall be continuing, and to the extent not theretofore applied, to be paid to, and retained by Lessee; and

(iii) Lessor agrees that, as and when any right of action shall arise against the Seller in relation to the terms of purchase, value, durability, merchantability, fitness for use, suitability, capacity, age, quality, description, state, condition, design, construction, use, operation or performance of, or any patent infringement or alleged patent infringement in relation to, the Equipment or any part thereof, Lessee shall be entitled, unless and until a Default or an Event of Default shall have occurred and be continuing, at its own expense to exercise all rights of Lessor against the Seller; provided that any amounts received in exercising such rights shall be applied in the manner set forth in Section 5(c)(ii) hereof.

SECTION 6. Assignments and Subleases; Possession; Operation and Use; Maintenance; and Identification.

(a) Assignment or Sublease by the Lessee. Provided no Event of Default shall have occurred and be continuing, the Lessee may assign all or any part of the Lessee's rights under this Lease to any Person or sublease to any Person any or all Items of Equipment; provided, however, that any such assignment or sublease hereunder shall be subject to the following conditions:

(i) The original named Lessee shall not be released or discharged from this Lease or its obligations under the other Operative Documents and shall continue primarily and fully liable for the performance of all the Lessee's obligations hereunder and thereunder;

(ii) Any such assignment or sublease shall be expressly provide that: (A) it is subject to and subordinate to the provisions of this Lease and the other Operative Documents and (B) this Lease shall remain in full force and effect;

(iii) Lessee shall agree to indemnify Lessor and each other Tax Indemnitee, in a manner satisfactory to Lessor and each other Tax Indemnitee, as the case may be, in its sole discretion exercised in good faith, for any Taxes, loss of tax benefits or other adverse tax consequences resulting from any such assignment or sublease;

(iv) Any such assignment or sublease shall not extend beyond the end of the Term;

(v) The Lessee shall have given the Lessor prior written notice of such assignment or sublease;

(vi) The terms of any such sublease are not inconsistent with the terms of this Lease (including, without limitation, Lessor's repossession rights and other remedies upon an Event of Default and Lessor's rights under Section 7(c) hereunder);

(vii) Any such assignee or sublessee shall covenant and agree, for the benefit of the Lessor, that it will use the Equipment only in the 48 continental states of the United States (plus the District of Columbia) and Alaska;

(viii) Any such subleasee shall covenant and agree, for the benefit of the Lessor, that it will not sub-sublease any Item of Equipment;

(ix) The Lessee shall deliver to the Lessor copies of the form of any such assignment or sublease at least thirty days prior to the execution thereof and a conformed copy promptly after the execution thereof; and

(x) Lessor shall have consented to any such assignment which consent shall not be unreasonably withheld.

(b) Possession. Except pursuant to an assignment or sublease effected in accordance with Section 6(a) hereof, Lessee shall not in any manner deliver, relinquish or transfer possession of, or permit any other Person to deliver, relinquish or transfer possession of, any Item of Equipment leased hereunder to any other Person during the Term without the prior written consent of Lessor (which consent shall not be unreasonably withheld); provided, that, the Lessee may without the prior written consent of Lessor deliver possession of any Item of Equipment to (and Lessee may deliver any such Item of Equipment to a common carrier for transportation by rail to) the Seller (or to any other reputable testing organization) for testing or other similar purposes or to any organization for service, repair, maintenance or overhaul work on such Item of Equipment or for alterations or modifications in or additions to such Item of Equipment to the extent required or permitted by the terms of this Lease; provided, further, that the rights of any transferee that receives possession of an Item of Equipment by reason of a transfer permitted by this Section 6(b) shall be expressly subject and subordinate to all the terms of this Lease and shall contain no provisions inconsistent with the terms of this Lease, including, without limitation, the rights of Lessor to repossess the Equipment. No such relinquishment of possession of any Item of Equipment by Lessee shall in any way release, discharge or diminish Lessee's obligations hereunder or constitute a waiver of Lessor's rights or remedies hereunder and Lessee shall remain primarily liable hereunder for the performance of all the terms of this Lease and the other Operative Documents as if such transfer had not occurred and all the terms and conditions of

this Lease and the other applicable Operative Documents shall remain in effect.

(c) Operation and Use. Lessee hereby covenants that the Equipment will be used for the transportation of plastics, synthetic (other than liquids). Lessee shall not use or operate, or suffer or permit any Item of Equipment to be used or operated, in violation of any Applicable Law or in violation of any license, permit, approval, consent or registration relating to such Item of Equipment issued by any governmental authority. Lessee shall not, and shall not permit any permitted sublessee to, operate, use or locate such Item of Equipment or suffer or permit such Item of Equipment to be operated, used or located (i) unless Lessee has entirely self-insured any risks associated with the use, possession or operation of an Item of Equipment in accordance with Section 10 of this Lease, in any geographic area excluded from coverage by any insurance required by the terms of Section 10 hereof or (ii) other than in the 48 continental states of the United States, Alaska, the District of Columbia, Canada or Mexico; provided, however, that prior to any such operation, use or location of any such Item of Equipment in Mexico, Lessee shall give Lessor at least 30 days' prior written notice, along with evidence satisfactory to Lessor and its counsel (in their sole discretion) as to Lessee's full and complete compliance with Section 2(c) hereof with respect to such jurisdictions. Lessee shall not use or cause any Item of Equipment to be used in any manner which is not at the time permitted (or insured) by any insurance required to be maintained by Lessee pursuant to Section 10 hereof and then in force.

Lessor agrees to take such reasonable actions as may be appropriate to comply, at the Lessee's request and at the sole cost or expense of Lessee, with all laws, rules and regulations applicable to Lessor and necessary to operate the Equipment by Lessee in accordance with its usual operations to the extent that such actions cannot be taken by Lessee on behalf of Lessor; provided that (i) there shall be no adverse effect on Lessor and (ii) Lessor shall not be required to consent to jurisdiction.

(d) Maintenance. Lessee, at its sole cost and expense, shall service, repair, maintain, overhaul and test each Item of Equipment, or shall cause each Item of Equipment to be serviced, repaired, maintained, overhauled and tested, during the Term (i) with at least the same degree of care that Lessee exercises in servicing, repairing, maintaining, overhauling and testing similar equipment owned or leased by it, (ii) (A) in compliance, in all material respects, with all Applicable Laws and (B) in accordance with prudent industry practices and the specifications and regulations of the Association of American Railroads and the Federal Railway Administration, and (iii) so as to keep each Item of Equipment in good operating order, repair and physical condition, commercially suitable for carrying the

commodities for which it was designed and suitable for interchange and in the same condition as when delivered to Lessee, ordinary wear and tear excepted, and (iv) at all times so as to be in compliance with any required maintenance procedures of the Seller relating to the maintenance and operation of the Equipment so as to preserve all warranties made by the Seller with respect to the Equipment; provided that Lessee may in good faith contest the validity or application of any such Applicable Law in any reasonable manner that does not affect Lessor's title to or interest in the Equipment and does not involve (i) any risk of the imposition of criminal liability on Lessor or any Indemnatee or (ii) any risk of unindemnified civil liability on Lessor or any Indemnatee, or (iii) any risk of the sale, forfeiture or loss of any Item of Equipment. Lessee shall maintain or cause to be maintained in the English language all records, logs and other materials required to be maintained by any applicable governmental authority or prudent industry practice in respect of the Equipment.

(e) Equipment Identification. (i) At all times after the Lease Commencement Date, except as otherwise expressly provided for in Sections 8(c), 9(a), 14, 15 and 17 hereof, Lessor shall hold title to the Equipment. Lessee's books and records with respect to the Equipment shall reflect, and Lessee shall cause each permitted sublessee's books and records with respect thereto to reflect, the ownership interests of the Lessor therein.

(ii) The Lessee will cause each Item of Equipment to be kept numbered with its identifying number as set forth in the related Lease Supplement and will not change the identifying number of any Item of Equipment unless (A) a statement of new identifying numbers to be substituted therefor shall have been delivered to the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited and (B) the Lessee shall have furnished the Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect, preserve and maintain the Lessor's title to such Equipment and no filing, recording, deposit or giving of notice with or to any other foreign, federal, state or local government or agency thereof is necessary to protect, preserve and maintain the ownership interest of the Lessor in such Equipment while operating in any jurisdiction wherein the Lease or any instrument in respect thereof has been or is required to be filed, registered, deposited or recorded. The Lessor agrees to execute at Lessee's cost and expense all instruments necessary to accomplish such filings, recordings and deposits.

SECTION 7. Inspection. (a) At all reasonable times, Lessor, or its authorized representatives, may on reasonable

notice inspect the Equipment and the books and records of Lessee relating thereto and may make copies of those parts of such books as Lessor may reasonably request. All such inspections of the Equipment shall be visual, walk-around inspections, which may include going on board the Equipment, and, in any event, shall be conducted so as not to interfere with Lessee's or any sublessee's business or the operation and maintenance of the Equipment. Any inspection or observation made pursuant to this Section 7 shall be at the sole expense and risk of Lessor.

(b) Lessor shall have no duty to make any such inspection and shall not incur any liability or obligation by reason of not making any such inspection.

(c) The Lessee shall make any permitted sublease of the Equipment or any Item of Equipment expressly subject to Lessor's inspection rights hereunder.

SECTION 8. Replacement and Ownership of Parts; Alterations, Modifications and Additions.

(a) Replacement of Parts. Unless an Item of Equipment to which a Part relates has suffered an Event of Loss, Lessee, at its own cost and expense, will during the Term promptly replace, or cause to be replaced, all Parts that may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever. In addition, in the course of maintenance, service, repair, overhaul or testing, Lessee or a sublessee, at its own cost and expense, may remove any Parts, whether or not worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use, provided that Lessee or such sublessee, at its own cost and expense, shall promptly replace such Parts with replacement Parts or temporary replacement parts as provided in Section 8(c) hereof. All replacement Parts shall be free and clear of all Liens except Permitted Liens and shall be of the same type and capacity and in as good operating condition as, and shall have a fair market value and expected remaining useful life at least equal to, the Parts replaced assuming such replaced Parts were in the condition and repair required to be maintained by the terms hereof.

(b) Ownership of Parts. All Parts at any time removed from any Item of Equipment shall remain the property of Lessor and subject to this Lease, no matter where located, until such time as such Parts shall be replaced by parts that have been incorporated or installed in or attached to such Item of Equipment and that meet the requirements for replacement Parts specified in Section 8(a) hereof. Immediately upon any replacement Part becoming incorporated or installed in or attached to an Item of Equipment as provided in Section 8(a)

hereof, without further act, (i) ownership of the replaced part shall thereupon vest in Lessee or its designee, free and clear of all rights of Lessor and shall no longer be deemed a Part hereunder; (ii) ownership of such replacement Part shall thereupon vest in Lessor (subject only to Permitted Liens); and (iii) such replacement Part shall become subject to this Lease and be deemed part of such Item of Equipment for all purposes hereof to the same extent as the Parts originally incorporated or installed in or attached to such Item of Equipment.

(c) Alterations, Modifications and Additions. Lessee, at its sole cost and expense, shall make or cause to be made such alterations and modifications in and additions to each Item of Equipment as may be required from time to time by Applicable Law; provided, that Lessee may in good faith contest the validity or application of any such requirements in any reasonable manner which does not adversely affect Lessor's right, title or interest in or to the Equipment and does not involve (i) any risk of the imposition of criminal liability on Lessor or any Indemnitee or (ii) any risk of unindemnified civil liability on Lessor or any Indemnitee, or (iii) any risk of the sale, forfeiture or loss of any Item of Equipment. In addition, Lessee, at its sole cost and expense, may from time to time make such alterations and modifications in and additions to each Item of Equipment as Lessee reasonably may deem desirable, including removal (without replacement) of Parts which Lessee or such permitted sublessee deems obsolete or no longer appropriate or suitable for use in such Item of Equipment; provided, that any such removal shall be made on a basis that does not discriminate between the Equipment and other freight cars of a similar nature owned or used by the Lessee; and provided, further that such alterations, modifications or additions do not (i) decrease or reduce the fair market value, utility or remaining useful life of such Item of Equipment, (ii) cause any Item of Equipment to constitute "limited use property" within the meaning of Revenue Procedures 75-21 and 79-48, as amended, or (iii) change (except to an insignificant extent) the nature, use, type or capacity of such Item of Equipment. Title to any severable Part not mandated by Applicable Law to be incorporated or installed in, or attached or added to, any Item of Equipment (each, an "Optional Part") as the result of such alteration, modification, removal or addition shall remain in Lessee and may be removed at any time during the Term; provided that (i) such Part is in addition to, and not in replacement of or substitution for, any Part originally incorporated or installed in or attached or added to such Item of Equipment at the time of the delivery thereof hereunder or any Part in replacement of, or substitution for, any such Part, (ii) such Part is not otherwise required to be incorporated or installed in or attached to such Item of Equipment pursuant to the terms hereof, (iii) such Part can be removed from such Item of Equipment without damage and without diminishing the fair market value, capacity or remaining economic useful life of such



Item of Equipment which such Item of Equipment would have had at such time, had such alteration, modification, removal or addition not occurred, assuming such Item of Equipment was maintained in the condition required by the terms of this Lease, (iv) no Default or Event of Default shall have occurred and be continuing and (v) the cost of such Part was not paid by the Lessor. Title to all Parts (other than Optional Parts) shall, without further act, vest in Lessor. Upon termination of this Lease, if and to the extent that such Optional Parts are reasonably necessary for the economic operations of the Equipment, Lessor shall have the right to purchase any such Optional Part for its then fair market value prior to the return to Lessor (including return pursuant to the exercise of remedies under Section 17 hereof) of the Equipment or such Item of Equipment including such Optional Part. If Lessor elects not to purchase any Optional Part, Lessee shall at its option remove such Part or return the Equipment or such Item of Equipment with such Part intact.

Notwithstanding anything herein to the contrary, Lessee shall not make any alteration, modification or addition to any Item of Equipment that would change the nature or use of such Item of Equipment from that of covered hopper freight railcars. Unless Lessee shall provide an indemnity (including without limitation, an indemnity with respect to taxes and tax risks) satisfactory to Lessor, Lessee shall not permit any Item of Equipment to be in such condition that, upon return thereof to Lessor or sale thereof to a third party, it could not, without repair or modification, accommodate a standard U.S. track gauge than if such modification had not been made.

#### SECTION 9. Event of Loss; Replacement.

(a) Event of Loss. Upon the occurrence of an Event of Loss with respect to any Item of Equipment, Lessee shall notify Lessor within 30 days thereof (such notice to include information identifying such Item(s) of Equipment and the circumstances of such Event of Loss), and by written notice to Lessor given within 45 days after the occurrence of such Event of Loss, elect one of the following two alternatives (provided that if Lessee shall fail to give such notice or if an Event of Default shall have occurred and be continuing, Lessee shall be deemed to have elected alternative (i)):

(i) pay to Lessor on the first Basic Rent Payment Date occurring at least forty-five (45) days after such Event of Loss (the "Loss Payment Date"), (A) the Termination Value indicated in Exhibit B hereto for the Loss Payment Date with respect to the Item of Equipment, (B) any amount of Basic Rent payable with respect to such Item of Equipment due on such Loss Payment Date, (C) interest at the Overdue Rate for the period between the Loss Payment Date and the date of payment by the Lessee and (D) if such Event of Loss will

result in the termination of this Lease, all other amounts, whether Basic Rent, Supplemental Rent or otherwise, owing by Lessee to Lessor hereunder or to the Lessor or any other Person under the Participation Agreement, the Tax Indemnification Agreement or any other Operative Document to which either is a party; or

(ii) Lessee shall convey, or cause to be duly conveyed, to Lessor, as replacement for the Item of Equipment with respect to which such Event of Loss occurred, title to a Replacement Item of Equipment, free and clear of all Liens whatsoever (other than Permitted Liens described in Section 11(a) hereof) within 180 days of such Event of Loss; provided, however, that Lessee's right to elect this alternative (ii) shall be subject to the following conditions (x) Lessor has a Reasonable Basis to conclude that Lessor shall not suffer any adverse tax consequences as a result of such Event of Loss or replacement (or both) and (y) Lessor shall have received such additional indemnities with respect to the Replacement Item of Equipment from Lessee as it may request and as are consistent with the indemnities of Lessee in the Operative Documents. In such event, immediately upon the effectiveness of such substitution (as provided in the next succeeding paragraph) and without further act, (A) ownership of the Replacement Item of Equipment shall thereupon vest in Lessor (subject only to Permitted Liens to the extent set forth in the preceding sentence), (B) ownership of the replaced Item of Equipment shall thereupon vest in Lessee or its designee free and clear of all rights of Lessor and such replaced Item of Equipment shall no longer be deemed an Item of Equipment hereunder, and (C) such Replacement Item of Equipment shall become subject to this Lease and be deemed an Item of Equipment for all purposes hereof to the same extent as the Item of Equipment originally leased hereunder.

In order to effect such substitution, the following documents shall be duly authorized, executed and delivered by the respective party or parties thereto (and recorded, if appropriate) and an executed counterpart of each shall be delivered to Lessor:

(1) a Lease Supplement covering the Replacement Item of Equipment;

(2) a bill of sale, in substantially the form of the Bill of Sale, covering the Replacement Item of Equipment, executed by the owner thereof in favor of Lessor;

(3) such evidence of compliance with the insurance provisions of Section 10 hereof with respect to the

Replacement Item of Equipment as Lessor may reasonably request;

(4) such certificates and opinions of counsel as to such matters as Lessor may reasonably request; and

(5) receipt of an Officer's Certificate of the Lessee setting forth the fair market value, type, capacity and estimated remaining useful life of the Replacement Item of Equipment.

Lessee shall pay the reasonable costs and expenses (including, without limitation, reasonable fees and expenses of counsel) of Lessor incurred in connection with any such substitution.

Upon such substitution, Lessor shall transfer without recourse or warranty (except for a warranty with respect to the absence of Lessor's Liens) all right, title and interest of Lessor in and to the replaced Item of Equipment to Lessee or its designee "as-is, where-is" and such replaced Item of Equipment shall no longer be deemed an Item of Equipment hereunder.

An Event of Loss for which Lessee has elected the alternative (ii) above shall not result in any adjustment to Basic Rent and, except as provided in the Tax Indemnification Agreement, shall not result in any change in Termination Values.

Upon payment in full of the Termination Value for an Item of Equipment and all other amounts payable pursuant to this Section, (1) the obligation of Lessee to pay any Basic Rent with respect to such Item of Equipment under Sections 3(b) and (f) shall terminate as of the Loss Payment Date, (2) the obligation of Lessee to pay Supplemental Rent (other than payments of Supplemental Rent to be made by Lessee and (x) surviving pursuant to Section 11 of the Tax Indemnification Agreement or Section 11 of the Participation Agreement or (y) in respect of liabilities and obligations of Lessee which have accrued but not been paid or which are in dispute as of the date of such payment) shall terminate, (3) the Term with respect to such Item of Equipment shall end, (4) Lessor will transfer to Lessee, without recourse or warranty (except as to Lessor's Liens), all of Lessor's right, title and interest in and to the Item of Equipment with respect to which Termination Value shall have been paid, and (5) Lessor will assign to or as directed by Lessee all claims of Lessor against third Persons (except to the extent Lessor is entitled thereto under Section 9(b) hereof), relating to such Item of Equipment arising from such Event of Loss.

If Lessee has not fully performed alternative (ii) above within 180 days following the occurrence of such Event of Loss, the Lessee shall be deemed to have elected alternative (i) and shall fully perform the same on the next Basic Rent Payment

Date which is at lease ten (10) days after the expiration of such 180-day period in accordance with the terms hereof.

(b) Non-Insurance Payments Received on Account of an Event of Loss. As between Lessor and Lessee, any payments on account of an Event of Loss with respect to any Item of Equipment or any Part received at any time by Lessor, Lessee or any permitted sublessee or any other Person from any governmental authority or other Person will be applied as follows:

(i) if Lessee has performed or is to perform alternative (i) in Section 9(a), so much of such payments as shall not exceed the Termination Value and such other amounts required to be paid by Lessee pursuant to said Section 9(a)(i), (x) shall be paid to Lessor and such payment to Lessor shall be applied in reduction of Lessee's obligation to pay such Termination Value by an amount equal to such payment and (y) the balance, if any, in excess of the Termination Value and such other amounts shall be divided between Lessor and Lessee as their respective interests may appear relative to the values of Lessee's leasehold interest in the Items of Equipment and Lessor's ownership of the Items of Equipment subject to this Lease; and

(ii) if Lessee has performed or is to perform alternative (ii) in Section 9(a), all such payments shall be paid over to, or retained by, Lessor pursuant to Section 19 hereof, as security for Lessee's obligations thereunder, until Lessee shall have fully performed its obligations under such Section 9(a)(ii) with respect to such Item of Equipment as to which an Event of Loss has occurred, at which time such payments shall be paid over to Lessee.

(c) Requisition for Use with Respect to Items of Equipment. If an Item of Equipment is requisitioned for use by any government or any agency or instrumentality thereof and, for so long as such requisition does not constitute an Event of Loss, all Lessee's obligations under this Lease with respect to such Item of Equipment shall continue to the same extent as if such requisition had not occurred. All payments received by Lessor, Lessee, any permitted sublessee or any other Person in connection with any such requisition for use during the Term (other than any such requisition which constitutes an Event of Loss, as to which the provisions of Section 9(a) hereof shall apply) or under a sublease or transfer then in effect from any government or any agency or instrumentality thereof for the use of such Item of Equipment during the Term shall be paid over to, or retained by, Lessee or such permitted sublessee, as the case may be. All payments received by Lessor, Lessee, such permitted sublessee or any other Person from any government or any agency or instrumentality thereof for the use of such Item of Equipment

after the Term shall be held in trust by the recipient thereof for the benefit of Lessor and shall be paid over to, or retained by, Lessor (unless Lessee shall have exercised any of its options to purchase the Equipment pursuant to Section 14 hereof, in which case all such payments received after such purchase shall be paid over to, or retained by, Lessee). Lessee shall promptly notify Lessor or cause Lessor to be notified in writing of any such requisition. In the event of any such requisition for use, Lessee agrees to use its best efforts to obtain reimbursement from the applicable government or any agency or instrumentality thereof to Lessor for damages suffered by Lessor as a result of such requisition for use. Lessee agrees to notify Lessor or cause Lessor to be notified promptly in writing in advance of the time when any negotiations between Lessee or any such permitted sublessee, as the case may be, and the government or any agency or instrumentality thereof with respect to any such requisition shall commence and will consult with Lessor regarding methods or procedures to be employed to effect recovery from the applicable government or any agency or instrumentality thereof for any damages suffered by Lessor by reason of such requisition for use.

#### SECTION 10. Insurance.

(a) Insurance Requirements. Lessee shall provide, at Lessee's sole cost and expense, property damage insurance and public liability insurance or, pursuant to Section 10(h), self-insurance with respect to property damage and public liability with respect to the Equipment in such amounts and with such deductibles (or self-insurance amounts) as are consistent with prudent industry practices in the United States, but in all events in such amounts at least equal to, and on terms no less favorable than, insurance (or self-insurance) carried by Lessee with respect to other rail cars owned or operated by Lessee similar to the Equipment; provided, that the property insurance (or self-insurance for property damage) maintained by Lessee for the Equipment shall be in an amount not less than the Termination Value and shall identify the Lessor as loss payee.

Each policy of insurance carried in accordance with this Section 10(a) hereof shall:

(i) name Lessor as an additional insured for its interests;

(ii) expressly provide that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured;

(iii) contain as its minimum geographical limits, if any, all countries, states and territories within which the Equipment will be operated;

(iv) contain an agreement by the insurer that notwithstanding the lapse of any such policy (except by reason of expiration in accordance with its terms) or any right of cancellation by the insurer or any cancellation by Lessee, whether voluntary or involuntary, each such policy shall continue in force for the benefit of Lessor for at least thirty days after written notice of such cancellation shall have been sent to Lessor except upon written approval of Lessor;

(v) insure Lessor's interests up to the limits of such policy and shall not be invalidated by any action or inaction of Lessee or any other Person regardless of any misdescription, breach or violation by Lessee or any other Person of any warranties, declarations or conditions contained in such policies;

(vi) waive any right of the insurers to any set-off or counterclaim or any other deduction and waive any right of subrogation against the Lessor;

(vii) provide that the Lessor shall not have any obligation or liability for premiums in connection with such insurance or any call, commission or assessment with respect thereto; and

(viii) shall be primary without right of contribution from any other insurance that is carried by any other Person.

(b) Compliance with Policies. Lessee will not do any act or voluntarily suffer any act to be done whereby any insurance required under this Section shall or may be suspended, impaired or defeated. Subject to the Lessee's self-insurance rights set forth in Section 10(h), Lessee shall not, under any circumstances, permit or suffer the Equipment to be used or operated during any period when the insurance required under this Section 10 is not in full force and effect with respect to Lessor for the risks to be insured against thereunder.

(c) Failure to Insure. (i) Subject to the Lessee's self-insurance rights set forth in Section 10(h), if in the event that for any reason Lessee should fail to renew or replace any policy or contract of insurance under Section 10(a) or fail to keep any such policy in full force and effect, Lessor shall have the option to pay the premiums on any such policy or contract of insurance or to take out new insurance in amount, type, coverage and terms satisfactory to Lessor; provided that Lessor shall (to the extent reasonably practicable) give Lessee prior written notice before taking any such action.

(ii) Any sum so paid by Lessor shall be immediately due and payable to Lessor by Lessee, together with interest at the Overdue Rate from the date upon which Lessor incurs the expense; provided that no exercise by Lessor of the option set forth in Section 10(c)(i) shall in any way affect (or be deemed to be a waiver of) the provisions of this Lease (or Lessor's rights and remedies hereunder), including the provisions that failure by Lessee to maintain the prescribed insurance shall constitute an Event of Default.

(d) Notification of Claim. Lessee shall as soon as possible under the circumstances notify Lessor of any material claim under any such insurance or of the occurrence of any event giving rise to any material claim thereunder, and Lessee shall make, enforce, settle or compromise any and every such claim in respect of such insurance and demand, sue for, recover, receive and give discharges for all moneys payable by virtue thereof.

(e) Application of Insurance Proceeds. As between Lessor and Lessee, any insurance payments received under policies that Lessee is required to maintain pursuant to Section 10(a) shall be applied as follows:

(i) if such payments are received with respect to loss or damage not constituting an Event of Loss, such payments shall be applied in payment for repairs or for replacement property in accordance with the terms of Sections 6 and 8, if not already paid for by Lessee (or to reimburse Lessee for such repairs or replacements already paid for by Lessee), and any balance remaining after compliance with such Sections with respect to such loss shall be paid to Lessee;

(ii) if such payments are received with respect to an Event of Loss and Lessee is to perform alternative (i) in Section 9(a) hereof, so much of such payments remaining as shall not exceed the Termination Value and other amounts required to be paid by Lessee pursuant to Section 9(a) hereof shall be applied in reduction of Lessee's obligation to pay such Termination Value and other amounts if not already paid by Lessee, and to reimburse Lessee if such Termination Value and other amounts shall have been paid, and the balance, if any, of such payments shall be promptly paid over to, or retained by, Lessee; or

(iii) if such payments are received with respect to an Event of Loss and Lessee is to perform alternative (ii) in Section 9(a) hereof, such payments shall be paid over to, or retained by, Lessor, as security for the performance of Lessee's obligations under Section 9(a) hereof with respect to such Event of Loss, until Lessee shall have fully performed its obligations under Section 9(a)(ii) with

respect to such Equipment as to which an Event of Loss has occurred, at which time such payment shall be paid over to Lessee.

Any proceeds received by Lessor or Lessee from any insurance policy maintained by such Person that is not required to be maintained hereunder, shall be paid to, and retained by, the Person maintaining such policy.

(f) Certificates. During the Term and, to the extent applicable, concurrently with the renewal of each insurance policy, (but in no event less frequently than (x) once each calendar year in the first quarter of such year beginning in 1994 and (y) within 21 days of renewal of any policy), Lessee shall cause to be furnished to Lessor either (i) a certificate of a firm of insurance brokers or of an authorized representative of the insurers evidencing each policy of insurance carried in accordance with this Section 10 or (ii) an Officer's Certificate to effect that Lessee is then exercising its right to self-insure pursuant to Section 10(h) hereof.

(g) Copies and Descriptions of Policies; Other Insurance. (i) If requested by Lessor, Lessee will arrange to be delivered to Lessor copies of all applicable provisions of any insurance carried on the Equipment. If requested by Lessor, Lessee shall promptly furnish to Lessor an Officer's Certificate setting forth all insurance maintained by Lessee pursuant to this Section 10 and describing such policies, if any, including the amounts of coverage, any deductible amounts, the names of the insurance providers and a general description of each such policy's terms and the status of any self-insurance.

(ii) Lessor shall have the right to carry insurance on the Items of Equipment for its own benefit; provided, that such insurance is carried at the expense of a Person other than Lessee.

(h) Self-Insurance. Lessor acknowledges and agrees that if at any time during the Term it is the policy of Lessee to self-insure for all risks (including liability) associated with the use, possession and operation of the Equipment and for all similar equipment owned or leased by it, Lessee shall not be required to maintain the third-party insurance otherwise required under Section 10(a) hereof; provided, that Lessee shall continue to be obliged to comply with the other requirements of Section 10(a) hereof.

SECTION 11. Liens. Lessee shall not during the Term directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to the Equipment or title thereto or any interest therein or in this Lease except (a) the respective rights of Lessor and Lessee as provided herein and as



contemplated in the other Operative Documents; (b) the rights of others under agreements or arrangements solely to the extent expressly permitted in Section 6(a) hereof; (c) Liens for Taxes payable by Lessee either not yet due or being contested in good faith (and for the payment of which adequate reserves have been provided pursuant to generally accepted accounting principles) by appropriate proceedings diligently conducted so long as such proceedings do not involve any danger of the sale, forfeiture or loss of the Equipment or any interest therein; (d) suppliers', mechanics', workers', repairers', employees' or other like Liens arising in the ordinary course of business and for amounts the payment of which is either not yet delinquent or is being contested in good faith (and for the payment of which adequate reserves have been provided pursuant to generally accepted accounting principles) by appropriate proceedings, so long as such proceedings do not involve any danger of the sale, forfeiture or loss of the Equipment or any interest therein; (e) Liens arising out of judgments or awards against Lessee with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith by appropriate proceedings and with respect to which there shall have been secured a stay of execution pending such proceeding; and (f) customary salvage and similar rights of insurers under policies of insurance maintained with respect to the Equipment. Liens described in clauses (a) through (g) above are referred to herein as "Permitted Liens". Lessee shall promptly, at its sole cost and expense, take or cause to be taken such action as may be necessary to duly discharge any Lien other than a Permitted Lien arising at any time. The Lessor covenants that it will, at its own cost and expense, promptly take such action as may be necessary to duly discharge any Lessor's Lien at any time arising and attributable to it; provided that the Lessor may in good faith by appropriate proceedings contest claims or charges resulting in any such Lessor's Lien as long as such contest does not involve any material danger of the sale, forfeiture or loss (or loss of use) of the Equipment and does not result in a breach of Lessor's obligations pursuant to Section 5(b) hereof.

SECTION 12. Further Assurances. Lessee covenants and agrees with the Lessor to do, or cause to be done, such further acts, or to execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other documents, assurances and conveyances as Lessor may reasonably request from time to time in order to carry out more effectively the intent and purpose of this Lease and the other Operative Documents and to establish and protect the rights and remedies created or intended to be created in favor of Lessor hereunder, including, without limitation, if requested by Lessor, the execution and delivery of supplements or amendments hereto, in recordable form, subjecting any replacement or substituted Item of Equipment to this Lease and the recording or filing of counterparts hereof or of financing statements with respect hereto.

SECTION 13. Return of the Equipment. Unless Lessee or its designee shall purchase the Equipment then subject to this Lease pursuant to the express terms hereof, Lessee will, upon the expiration or earlier termination of the Term (or upon a demand by Lessor pursuant to Section 17(a) hereof), return at Lessee's sole risk, cost and expense all the Equipment (except any Items of Equipment deemed to have suffered an Event of Loss), free and clear of any Liens, by delivering the same, at Lessor's election, to such site in the continental United States as Lessor shall designate in writing; provided, that prior to such delivery, Lessor, upon reasonable notice to Lessee, shall have the right to inspect the Equipment at any reasonable time. The Lessee shall not be obliged to move each Item of Equipment more than once pursuant to the preceding sentence, and, upon full compliance by the Lessee with the foregoing provisions, Lessee shall have no further obligation to move any Item of Equipment. Upon the return of any Item of Equipment, Lessee shall deliver to Lessor all records, logs and other materials in the possession of Lessee or its agents that (x) are required to be maintained in respect to such Item of Equipment by any applicable governmental authority having jurisdiction or (y) are necessary or useful to the ownership, use, operation, or maintenance of such Item of Equipment; provided, that Lessee may deliver computerized compilations, photocopies or other facsimiles of such records, logs and other materials unless the original thereof is required by applicable governmental authority to be in the possession of the Person who is in possession of the Item of Equipment to which such record, log or other materials relate. Each Item of Equipment when returned to Lessor shall be in the condition required by this Lease.

SECTION 14. Alternatives at the End of the Term; Purchase by Lessee.

(a) Lessee's Alternatives. Subject to all the terms and conditions set forth in this Section 14, Lessee may exercise one of the following alternatives with respect to the Lease Expiration Date (unless the Lease shall have theretofore been terminated in accordance with its terms):

(i) elect to purchase all (but not less than all) of the Equipment from Lessor "as-is, where-is" without recourse or warranty of any kind (except with respect to the absence of Lessor's Liens) on the date on which the Basic Term ends (the "Lease Expiration Date") for a cash price equal to the Fair Market Sales Value of the Equipment; or

(ii) elect to renew this Lease for a Renewal Term pursuant to and in compliance with Section 4 hereof.

(b) Notice. Not less than 180 days nor more than 360 days prior to the Lease Expiration Date, Lessee shall irrevocably notify Lessor in writing whether or not Lessee will exercise one of its options pursuant to Section 14(a) hereof. Failure to give any such notice by such 180th day prior to the Lease Expiration Date shall be deemed to be an irrevocable election of Lessee not to exercise any such option.

(c) Purchase Options. In addition to Lessee's rights pursuant to Section 14(a)(i), so long as no Event of Default has occurred and is continuing as of either the date of exercise or of purchase, Lessee shall have the option to purchase all (but not less than all) of the Equipment from Lessor "as-is, where-is" without recourse or warranty of any kind (except with respect to the absence of Lessor's Liens):

(i) on the eighteenth (18th) anniversary of the Lease Commencement Date (the "EBO Date") for a cash purchase price equal to 48.666% of the Equipment Cost; and

(ii) on the date of the expiration of any Renewal Term for a cash purchase price equal to the Fair Market Sales Value, as determined pursuant to the Appraisal Procedure.

If Lessee wishes to exercise either such option set forth on this Section 14(c), it shall give the Lessor written notice (which shall be irrevocable) of such election not less than 180 days nor more than 360 days prior to the EBO Date or the expiration of such Renewal Term, as the case may be.

(d) Exercise of Purchase Option. If Lessee elects to purchase the Equipment pursuant to Section 14(a)(i), 14(c) or 15(f) hereof, upon payment in cash to Lessor of an amount equal to the purchase price for the Equipment required thereunder plus all other amounts owing by Lessee to Lessor and any other Person pursuant to the Participation Agreement and the other Operative Documents (whether as Basic Rent, Supplemental Rent or otherwise), all of Lessor's right, title and interest in and to the Equipment shall be deemed automatically to have been transferred by Lessor to Lessee or its designee, without recourse or warranty, except with respect to the absence of Lessor's Liens thereon. In connection with such transfer of title and assignment of warranties pursuant to the following paragraph, Lessee shall prepare and Lessor shall execute, as the case may be, a bill of sale evidencing such transfer, a termination of the Lease and such other documents and opinions as Lessee may reasonably request, all at the sole cost and expense of Lessee. Upon satisfaction of the requirements of this Section 14(d), Lessor will, if requested in writing by Lessee, transfer the Equipment directly to such Person as Lessee may designate in writing. Upon compliance by Lessee with the provisions of this Section 14(d), this Lease shall terminate except for the

obligation of Lessee to pay Supplemental Rent (x) surviving pursuant to Section 11 of the Tax Indemnification Agreement or Section 11 of the Participation Agreement or (y) in respect of liabilities and obligations of Lessee which have accrued but not been paid or which are in dispute as of the date of such transfer.

Upon any transfer of title to the Equipment by Lessor pursuant to this Section 14(d), Lessor shall assign to Lessee or such other person as Lessee may nominate all of the rights Lessor may have under any representation, warranty or other obligation with respect to the Equipment made by the Seller or any other claims against the Seller with respect to the Equipment.

SECTION 15. Voluntary Termination; Special Termination Event.

(a) Termination by Sale of Equipment. On or after the seventh anniversary of the Lease Commencement Date, and so long as no Event of Default shall have occurred and be continuing, Lessee shall have the right at its option on at least 120 days' (but not more than 360 days') prior notice to Lessor specifying a proposed date of termination (which date shall, in any case, be a Basic Rent Payment Date) (the "Termination Date"), to terminate this Lease, which notice shall be accompanied by an Officer's Certificate certifying that the Equipment has become economically obsolete or surplus to Lessee's requirements. During the period following the giving of such notice of termination until the Termination Date, Lessee as non-exclusive agent for Lessor shall use its best efforts to obtain bids for the cash purchase of, and Lessor or its agents may endeavor to sell for cash, all (but not less than all) of the Equipment to an unrelated third party on an "as-is, where-is" basis without any warranty by Lessor except with respect to the absence of Lessor's Liens. In the event that Lessee receives an offer to purchase the Equipment, Lessee shall immediately certify in writing to Lessor the amount and terms of such offer, the proposed date of such purchase and the name and address of the party submitting such offer (which shall not be Lessee or an Affiliate of Lessee). Unless Lessor shall have previously elected to take possession of such Items of Equipment in accordance with Section 15(c) hereof, on the Termination Date, or such other date of sale as shall be consented to in writing by Lessor, which date shall thereafter be deemed the Termination Date, Lessee (as agent for Lessor) shall (i) arrange the sale of all (but not less than all) of the Equipment for cash to whomever shall have submitted the highest bid for the cash purchase of the Equipment and (ii) upon delivery to Lessor of the cash purchase price, together with all amounts required under Section 15(b) below, deliver the Equipment in accordance with the return conditions of Section 13, or cause the Equipment to be delivered, to the party that shall have agreed to purchase the Equipment in the manner which may be agreed upon between Lessee and such

party. Lessor shall be under no duty to solicit bids, to inquire into the efforts of Lessee to obtain bids or otherwise take any action in connection with any such sale other than to transfer to the purchaser selected in accordance with this Section 15(a) certified by Lessee to Lessor, without recourse or warranty (except with respect to the absence of Lessor's Liens), all of Lessor's right, title and interest in and to the Equipment, against receipt of the payments provided for herein.

(b) Payments Due Upon Sale of Equipment. The total selling price realized at such sale shall be paid over to Lessor and, in addition, on the Termination Date, Lessee shall pay in immediately available funds (i) to Lessor an amount equal to the excess, if any, of (x) the Termination Value with respect to the Equipment as of the Termination Date over (y) the net proceeds, if any, of the sale of the Equipment, and (ii) to Lessor and any other Person entitled thereto, all unpaid Supplemental Rent due on or before or after the Termination Date, plus (iii) to Lessor, all unpaid Basic Rent payable on or before the Termination Date.

(c) Preemptive Election by Lessor. Notwithstanding the foregoing provisions of this Section 15, Lessor may, not less than 30 days prior to the Termination Date, notify Lessee in writing of its preemptive election to take possession of the Equipment with respect to which Lessee has elected to terminate this Lease. Upon receipt of such notice from Lessor of such preemptive election, Lessee shall cease its efforts to arrange the sale of such Equipment as provided above and shall reject all bids theretofore or thereafter received, if any. Lessee shall deliver, or cause to be delivered, the Equipment to Lessor in accordance with the terms of Section 13 hereof and shall pay (i) all Basic Rent payable on or before the Termination Date, and (ii) all unpaid Supplemental Rent (but excluding Termination Value) due on or before the Termination Date.

(d) Termination of Lease. Upon delivery by Lessee or its designee of the Equipment as contemplated by Sections 15(a) and (b) and payment by Lessee of all amounts payable by Lessee under either Section 15(b) or 15(c), as the case may be, the obligations of Lessee to pay Basic Rent shall cease for any period commencing on or after the Termination Date and the Term shall end.

(e) Effect of No Sale to Lessor. If, on the Termination Date, no sale of the Equipment shall have occurred Lessee's notice given pursuant to Section 15(a) shall be deemed to be withdrawn as of such date (provided Lessee has not withdrawn more than one previous notice given pursuant to this Section 15) and this Lease shall continue in full force and effect. Whether or not such sale occurs, Lessee shall reimburse Lessor for all costs and expenses reasonably incurred by them relating to Lessee's having given such notice of termination.

(f) Special Termination Event. If solely as a result of a change in Applicable Law after the Lease Commencement Date (and not as a result of any act or omission of any Lessee Person) it becomes illegal for the Lessee to lease the Equipment hereunder, the Lessee shall have the option to purchase the Equipment, upon not less than 90 days and not more than 180 days written notice and provided that no Event of Default shall be in existence on the date of such notice, on a Basic Rent Payment Date specified in such notice for an amount equal to the greater of (i) the Fair Market Sales Value of the Equipment and (ii) Termination Value determined as of such Basic Rent Payment Date. Lessee shall also pay to Lessor (i) all Basic Rent accrued and unpaid to and including such Basic Rent Payment Date plus (ii) all Supplemental Rent owing by the Lessee on such Basic Rent Payment Date. The procedures set forth in Section 14(d) hereof shall govern the purchase and sale of the Equipment pursuant to this Section 15(f).

SECTION 16. Events of Default. The following events shall constitute "Events of Default" (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) Lessee shall fail to make any payment of Basic Rent or Termination Value when due and such failure shall continue for a period of 10 Business Days after receipt by Lessee of written notice of nonpayment from Lessor; or Lessee shall fail to make any payment of Supplemental Rent and such failure shall continue unremedied for a period of 30 calendar days after receipt by Lessee of written notice of nonpayment from Lessor; or

(b) Lessee shall fail to perform or observe any other covenant, agreement or condition to be performed or observed by it hereunder or under any other Operative Document (other than the Tax Indemnification Agreement) and such failure shall continue for a period of 30 days after receipt by Lessee of written notice thereof; provided, however, that as to any such failure to observe or perform (other than those which can be cured by the payment of money) which cannot be cured within the above 30 day period, then, so long as (x) Lessee has promptly instituted curative action within such period and is diligently pursuing such curative action to completion (y) such failure to observe or perform does not impair, in any material respect, the Lessor's right, title or interest in or to the Equipment and (z) Lessee delivers to Lessor periodic progress reports with respect thereto, such cure period may be extended for an additional period of up to the lesser of 180 days or the remaining period of the

Term, as may be reasonably necessary to cure such default with diligence; or

(c) any representation or warranty made by Lessee herein or in any Operative Document or in any document or certificate furnished to Lessor or any other Person by or on behalf of Lessee pursuant hereto or thereto shall prove to be incorrect in any respect; or

(d) Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy, insolvency, moratorium or other similar laws (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against Lessee in any such proceeding, or Lessee shall, by voluntary petition, answer or consent, seek relief under the provisions of any other now existing or future bankruptcy, insolvency or other similar law providing for the reorganization or winding-up of corporations or for an agreement, composition, extension or adjustment with its creditors; or shall adopt a resolution authorizing any of the foregoing; or

(e) an order, judgment or decree shall be entered in any proceeding by any court of competent jurisdiction appointing, without the consent of Lessee, a receiver, trustee, assignee or liquidator or similar official of Lessee, or of any substantial part of its property, or sequestering any substantial part of the property of Lessee, and any such order, judgment or decree or appointment or sequestration shall remain in force undismitted, unstayed or unvacated for a period of 90 days after the date of entry thereof; or

(f) a petition against Lessee in a proceeding under applicable bankruptcy, insolvency, moratorium or similar laws as now and hereafter in effect, shall be filed and shall not be withdrawn or dismissed within 90 days thereafter, or if, under the provisions of any law providing for reorganization or winding-up of corporations which may apply to Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of Lessee or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unstayed or unvacated for a period of 90 days; or

(g) any additional proceeding similar to those referred to in Section 16(d), (e) or (f) above for the relief of financially distressed debtors under the laws of any jurisdiction is entered into by Lessee voluntarily; or any additional proceeding similar to those referred to in Section 16(d), (e) or (f) above for the relief of

financially distressed debtors under the laws of any jurisdiction is entered into by or with respect to Lessee involuntarily and shall remain in force undismissed, unstayed or unvacated for a period of 90 days.

SECTION 17. Remedies. Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor may, at its option and sole discretion, declare this Lease to be in default (except that upon occurrence of any Event of Default described in Section 16(d), (e), (f) or (g) hereof, this Lease shall automatically be deemed to be in default); and at any time after this Lease shall be declared in default or be deemed to be in default pursuant to this sentence, so long as Lessee shall not have remedied all outstanding Events of Default, Lessor may in its sole discretion do, and Lessee shall comply with, one or more of the following with respect to the Equipment and any Parts, as Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory requirements of, Applicable Law then in effect:

(a) upon the written demand of Lessor and at Lessee's sole cost and expense, cause Lessee to, and Lessee shall, return promptly all or such part of the Equipment as Lessor may demand to Lessor or upon its order in the manner and condition required by, and otherwise in accordance with all of the provisions of, Section 13 hereof as if the Equipment was being returned at the end of the Term; or Lessor, at its option, may enter upon the premises, with only such notice as is reasonably required to comply with Lessee's standard and customary safety procedures, where all or any part of the Equipment is located or reasonably believed to be located and take immediate possession of and remove the same without the necessity to first institute proceedings, or by summary proceedings or otherwise, and Lessee shall promptly execute and deliver to Lessor such instruments of title or other documents as Lessor may deem necessary or advisable to enable Lessor or its agent to obtain possession of all or any part of the Equipment, all without liability to Lessor for or by reason of such entry or taking possession, whether for the restoration of damage to property caused by such entry and taking or otherwise (except to the extent such constitutes gross negligence or willful misconduct); provided, however, that if Lessee shall for any reason fail to execute and deliver such instruments and documents after such request, Lessor shall be entitled, in a proceeding to which Lessee shall be a necessary party, to a judgment for specific performance, conferring the right to immediate possession upon Lessor and requiring Lessee to execute and deliver such instruments and documents to Lessor;



(b) with or without taking possession thereof, sell or otherwise dispose of all or any part of the Equipment, at public or private sale and with notice to Lessee but with or without advertisement, and hold Lessee liable for any installment of Basic Rent due on or before the date of such sale, as Lessor may determine or hold, use, operate, lease to others or keep idle all or any part of the Equipment as Lessor, in its sole discretion, may determine, in any such case free and clear of any rights of Lessee, except as hereinafter set forth in this Section 17 and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto except to the extent required by Section 17(d) below in the event Lessor elects to exercise its rights under said paragraph in lieu of its rights under Section 17(c) below;

(c) whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under Section 17(a) or Section 17(b) above with respect to all or any part of the Equipment, Lessor, by written notice to Lessee specifying a payment date not earlier than 10 days from the date of such notice, may cause Lessee to pay to Lessor, and Lessee shall, on the payment date specified in such notice, pay to Lessor, as liquidated damages for loss of a bargain and not as a penalty (x) (in lieu of the Basic Rent due after the date on which such sale occurs but in addition to any installment of Basic Rent due on or prior to the date on which such sale occurs), any installment of Rent (including Supplemental Rent) due on or prior to such payment date plus (y) whichever of the following amounts Lessor in its sole discretion, shall specify in such notice (A) an amount equal to the excess, if any, of the Termination Value for such Equipment or part thereof, computed as of the Loss Payment Date occurring on or immediately preceding the payment date specified in such notice, over the Fair Market Rental Value of the Equipment or part thereof for the remainder of the Term, after discounting such Fair Market Rental Value semi-annually to present worth as of such payment date specified in such notice at the Base Rate; or (B) an amount equal to the excess, if any, of the Termination Value for such Equipment or part thereof computed as of the Loss Payment Date occurring on or immediately preceding the payment date specified in such notice, over the Fair Market Sales Value of such Equipment or part thereof as of such payment date; together, in the case of each of the preceding clauses (A) and (B), with interest, to the extent permitted by Applicable Law, at the Overdue Rate on the amount of such excess, if any, from such payment date specified pursuant to this Section 17(c), to the date of actual payment of such amount, provided that if the Equipment cannot be repossessed

Fair Market Rental Value and Fair Market Sales Value shall be deemed to be equal to zero;

(d) in the event that Lessor shall have sold all or any part of the Equipment pursuant to Section 17(b), then in lieu of exercising its rights under Section 17(c) above with respect to the Equipment or any part thereof, Lessor may, if it shall so elect, cause Lessee to pay Lessor, and Lessee shall pay to Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent due after the date on which such sale occurs but in addition to any installment of Basic Rent due on or prior to the date on which such sale occurs), any unpaid Rent due on or before such date and the amount of any deficiency between the net proceeds of such sale and the Termination Value of the Equipment or such part thereof, determined as of the Loss Payment Date occurring on or next preceding such sale together with interest, to the extent permitted by Applicable Law, at the Overdue Rate on the amount of such deficiency from the date of sale to the date of actual payment;

(e) so long as any or all of the Equipment has not been sold pursuant to Section 17(b) above, by written notice to Lessee specifying a Loss Payment Date which shall not be earlier than 30 days from the date of such notice, may cause Lessee to pay Lessor and Lessee shall pay to Lessor, on the Payment Date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent due after the Loss Payment Date specified in such notice), an amount equal to the higher of the Termination Value, the Fair Market Sales Value or the Fair Market Rental Value (at Lessor's election) for such Items of Equipment that have not been sold computed as of such Loss Payment Date; and upon such payment of liquidated damages and the payment of all other Rent then due and payable by Lessee hereunder, Lessor shall transfer, without recourse or warranty (except as to the absence of Lessor's Liens), all right, title and interest of Lessor in and to such Items of Equipment to Lessee or as it may direct, and Lessor shall execute and deliver such documents evidencing such transfer and take such further action as may be required to effect such transfer; and

(f) terminate this Lease as to any or all Items of Equipment, avoid any sublease or other transfer of possession, or exercise any other right or remedy which may be available under any Applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

For purposes of Sections 17(c)-(e) above, "Termination Value", as of any date therein referred to, for any Item of Equipment or any part thereof means a portion of the Termination Value for the Equipment, computed as of such date, which bears the same ratio to Termination Value for the Equipment as the original cost to Lessor of such Item of Equipment or part bears to Equipment Cost (as determined, if Lessor and Lessee shall not agree, by an independent appraiser selected by Lessor and reasonably satisfactory to Lessee).

In addition, Lessee shall be liable for any Supplemental Rent due hereunder before or after any termination hereof and all costs and expenses (including reasonable attorney's fees and disbursements) incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the retaking or return of any Item of Equipment (or any damages suffered as a result thereof) in accordance with the terms of Section 13 hereof or in storing or maintaining any Item of Equipment or any part thereof or placing the same in the condition required by Section 13 hereof or any appraisal of any Item of Equipment. At any sale of any Item of Equipment or portion thereof pursuant to this Section 17, Lessor may bid for and purchase such property. Except as otherwise expressly provided above, no remedy referred to in this Section 17 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor for the Event of Default at law or in equity; and the exercise or beginning of exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any or all such other remedies. The fact that Lessor may have one or more remedies, some or all of which may be exercised simultaneously or in conjunction with other remedies, shall not provide Lessor with any right to double recovery or recovery in excess of actual damages. No express or implied waiver by Lessor of any Event of Default hereunder shall in any way be, or construed to be, a waiver of any future or subsequent Event of Default.

SECTION 18. Lessor's Right to Perform for Lessee. If Lessee fails to make any payment of Rent required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, Lessor may itself make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the reasonable expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Overdue Rate, shall be deemed Supplemental Rent, payable by Lessee upon demand. No such payment or performance shall be deemed to waive any Default or Event of Default or relieve Lessee of its obligations hereunder or under the other Operative Documents.

SECTION 19. Investment of Security Funds. Any amounts otherwise payable to Lessee under this Lease or any other Operative Document but which shall be paid to or retained by Lessor pursuant to the terms hereof as a result of any Default or Event of Default shall be held by Lessor, as security for the obligations of Lessee under this Lease and the other Operative Documents to which either is a party, and, at such time as there shall no longer be continuing any such Default or Event of Default such amounts, net of any amounts theretofore applied to Lessee's obligations hereunder or under any other Operative Document, shall be paid to Lessee. Any such amounts which are held by the Lessor pending payment to Lessee shall, until paid to Lessee, as provided herein or until applied against Lessee's obligations hereunder, under the Participation Agreement or under any other Operative Document in connection with any exercise of remedies hereunder, be deposited by Lessor in an interest-bearing account bearing interest at the Federal Funds Rate, which shall be determined without the addition of the percentage set forth in clause (y) of the definition of "Federal Funds Rate."

Any interest received as the result of any such deposit (net of any fees, commissions, Taxes and other expenses, if any, incurred in connection with such deposit) shall be applied in the same manner as the amount deposited.

SECTION 20. Miscellaneous.

(a) Notices. All notices and other communications required under the terms and provisions hereof shall be given and shall be effective in accordance with the provisions of Section 13(a) of the Participation Agreement.

(b) Counterparts. This Lease may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall, subject to the next sentence and the legends appearing on the cover and signature page hereof, be an original, but all such counterparts shall together constitute but one and the same instrument. TO THE EXTENT, IF ANY, THAT THIS LEASE CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED UNDER THE UCC (OR UNDER OTHER APPLICABLE LAW) AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE AGREEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART CONTAINING THE RECEIPT THEREFOR EXECUTED BY THE LESSOR ON THE SIGNATURE PAGE HEREOF.

(c) Amendments. Neither this Lease nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by both parties.

(d) Agreement to Lease. This Lease shall constitute an agreement of lease, and nothing contained herein shall be construed as conveying to Lessee any right, title or interest in or to the Equipment except as a lessee only.

(e) Governing Law. THIS LEASE SHALL IN ALL RESPECTS BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK (INCLUDING SECTION 5-1401 NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ANY OTHER CONFLICT-OF-LAW AND CHOICE-OF-LAW RULES WHICH MIGHT LEAD TO THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION), AS TO ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

(f) Benefit and Binding Effect. The terms and provisions of this Lease shall inure to the benefit of and be binding on Lessor and Lessee and their respective successors and permitted assigns. Lessor may, with the prior consent of Lessee (which consent will not be unreasonably withheld), assign all (but not less than all) of its rights hereunder and under the other Operative Documents and/or its rights in the Equipment to any Person.

(g) Service of Process and Jurisdiction; Waiver of Immunity. The provisions of Section 13 of the Participation Agreement are incorporated herein by reference as though fully set out herein.

(h) Entire Agreement. This Lease, together with the agreements, instruments and other documents required to be executed and delivered in connection herewith, supersedes all prior agreements and understandings of the parties with respect to the subject matter covered hereby.

(i) Currency. All Rent is to be paid in Dollars.

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Lease to be duly executed by its authorized officer as of the day and year first above written.

LESSOR:

NATIONSBANC LEASING CORPORATION  
OF NORTH CAROLINA

By: James T. Shaw Jr.  
Name: James T. Shaw Jr.  
Title: Senior Vice President

LESSEE:

PHILLIPS PETROLEUM COMPANY

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Lease to be duly executed by its authorized officer as of the day and year first above written.

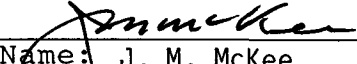

LESSOR:

NATIONSBANC LEASING CORPORATION  
OF NORTH CAROLINA

By: \_\_\_\_\_  
Name:  
Title:

LESSEE:

PHILLIPS PETROLEUM COMPANY

By:    
Name: J. M. McKee  
Title: Assistant Treasurer

STATE OF North Carolina  
COUNTY OF Mecklenburg

The foregoing instrument was acknowledged before me  
this 24th day of June, 1993, by James T. Shaw, Jr.,  
Senior Vice President of NationsBanc Leasing Corporation  
of North Carolina, a North Carolina corporation, on behalf of  
said corporation.

Deborah A. Reep  
(Notary Public)

Deborah A Reep  
(Printed Name)

[Notarial Seal]

My Commission Expires: 8/17/97

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 1993, by \_\_\_\_\_,  
\_\_\_\_\_ of Phillips Petroleum Company, a  
Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
(Printed Name)

[Notarial Seal]

My Commission Expires: \_\_\_\_\_



STATE OF )  
COUNTY OF )

The foregoing instrument was acknowledged before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 1993, by \_\_\_\_\_,  
of NationsBanc Leasing Corporation  
of North Carolina, a North Carolina corporation, on behalf of  
said corporation.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
(Printed Name)

[Notarial Seal]

My Commission Expires: \_\_\_\_\_

STATE OF OKLAHOMA )  
COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me  
this 30th day of June, 1993, by J. M. McKee,  
Assistant Treasurer of Phillips Petroleum Company, a  
Delaware corporation, on behalf of said corporation.

Connie Wallace  
(Notary Public)

Connie Wallace  
(Printed Name)

[Notarial Seal]

My Commission Expires: 07-11-96

**Exhibit A to the Lease**

**FORM  
OF  
LEASE SUPPLEMENT NO. 1**

THIS LEASE SUPPLEMENT NO. 1 (this "Lease Supplement") dated \_\_\_\_\_, 199\_, between NATIONSBANC LEASING CORPORATION OF NORTH CAROLINA, a North Carolina corporation (the Lessor"), and PHILLIPS PETROLEUM COMPANY, a Delaware corporation (the "Lessee");

WHEREAS, Lessor and the Lessee have heretofore entered into that certain Lease Agreement, dated as of March \_\_, 1993, with respect to the Equipment (the "Lease", the terms defined therein being herein used with the same meaning), which Lease provides for the execution and delivery of Lease Supplements in substantially the form hereof for the purpose of leasing specific Items of Equipment under the Lease when delivered to Lessee in accordance with the terms thereof. All of the terms and provisions of the Lease are hereby incorporated by reference in this Lease Supplement to the same extent as if fully set forth herein.

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, and pursuant to Section 2 of the Lease, Lessor hereby delivers and leases to Lessee, and Lessee hereby accepts and leases from Lessor, under the Lease as herein supplemented, the Items of Equipment described in and on Schedule I hereto.

To the extent, if any, that this Lease Supplement constitutes chattel paper (as such term is defined in the Uniform Commercial Code (or under other Applicable Law) as in effect in any applicable jurisdiction), no security interest in this Lease Supplement may be created through the transfer or possession of any counterpart other than the original counterpart containing the receipt therefor executed by the Lessor on the signature page thereof.

THIS LEASE SUPPLEMENT SHALL IN ALL RESPECTS BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK (INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ANY OTHER CONFLICT-OF-LAW OR CHOICE-OF-LAW RULES WHICH MIGHT LEAD TO THE APPLICATION OF THE INTERNAL LAWS OF ANY OTHER JURISDICTION) AS TO ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Lease Supplement to be duly executed by its authorized officer as of the day and year first above written.

Lessor:

NATIONSBANC LEASING CORPORATION OF  
NORTH CAROLINA

By: \_\_\_\_\_  
Name:  
Title:

Lessee:

PHILLIPS PETROLEUM COMPANY

By: \_\_\_\_\_  
Name:  
Title:

Receipt of this original counterpart of the foregoing Lease Supplement No. 1 is hereby acknowledged on this \_\_\_\_ day of \_\_\_\_\_, 1993.

NATIONSBANC LEASING CORPORATION OF  
NORTH CAROLINA

By: \_\_\_\_\_  
Name:  
Title:

STATE OF )  
 )  
COUNTY OF )

The foregoing instrument was acknowledged before me  
this \_\_\_\_ day of \_\_\_\_\_, 1993, by \_\_\_\_\_,  
\_\_\_\_\_ of NationsBanc Leasing Corporation of  
North Carolina, a North Carolina corporation, on behalf of said  
corporation.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
(Printed Name)

[Notarial Seal]

My Commission Expires: \_\_\_\_\_

STATE OF                    )  
                              )  
COUNTY OF                 )

The foregoing instrument was acknowledged before me  
this \_\_\_\_ day of \_\_\_\_\_, 1993, by \_\_\_\_\_,  
\_\_\_\_\_ of Phillips Petroleum Corporation, a  
Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
(Printed Name)

[Notarial Seal]

My Commission Expires: \_\_\_\_\_

Schedule I

Description of Items of Equipment

## EXHIBIT B

### -Termination Value Factors-

Values are net of any arrears rent due that day.

The lessee pays Termination Value plus "Rent".

Date of Termination	Termination Value Factor (%)
6/11/93	100.15233490
12/11/93	100.69452973
6/11/94	101.19776503
12/11/94	101.65851153
6/11/95	102.03273320
12/11/95	102.07858091
6/11/96	101.85972980
12/11/96	101.53316047
6/11/97	101.11303336
12/11/97	100.61464412
6/11/98	100.03749768
12/11/98	99.37780122
6/11/99	98.63476423
12/11/99	97.80446348
6/11/00	96.89088190
12/11/00	95.91738147
6/11/01	94.88680114
12/11/01	93.82879948
6/11/02	91.90110932
12/11/02	89.92268172
6/11/03	87.88284365
12/11/03	85.79013107
6/11/04	83.63276107
12/11/04	81.41917679
6/11/05	79.13750053
12/11/05	76.79607836
6/11/06	74.38293164
12/11/06	71.90630354
6/11/07	69.35410900
12/11/07	66.73448234
6/11/08	64.03522625
12/11/08	61.26435947
6/11/09	58.40956588
12/11/09	55.47874208
6/11/10	52.45944680
12/11/10	49.35944707
6/11/11	46.16616891
12/11/11	42.88724288
6/11/12	39.50995456
12/11/12	36.04178966
6/11/13	32.50000000

## EXHIBIT C

**-Rent Schedule-**

Date	Number	Basic Rent Factors
6/11/1993	0	.00000000
12/11/1993	1	3.76980877
6/11/1994	2	3.76980877
12/11/1994	3	3.76980877
6/11/1995	4	3.76980877
12/11/1995	5	3.76980877
6/11/1996	6	3.76980877
12/11/1996	7	3.76980877
6/11/1997	8	3.76980877
12/11/1997	9	3.76980877
6/11/1998	10	3.76980877
12/11/1998	11	3.76980877
6/11/1999	12	3.76980877
12/11/1999	13	3.76980877
6/11/2000	14	3.76980877
12/11/2000	15	3.76980877
6/11/2001	16	3.76980877
<u>12/11/2001</u>	17	3.76980877
6/11/2002	18	4.60754410
12/11/2002	19	4.60754410
6/11/2003	20	4.60754410
12/11/2003	21	4.60754410
6/11/2004	22	4.60754410
12/11/2004	23	4.60754410
6/11/2005	24	4.60754410
12/11/2005	25	4.60754410
6/11/2006	26	4.60754410
12/11/2006	27	4.60754410
6/11/2007	28	4.60754410
12/11/2007	29	4.60754410
6/11/2008	30	4.60754410
12/11/2008	31	4.60754410
6/11/2009	32	4.60754410
12/11/2009	33	4.60754410
6/11/2010	34	4.60754410
12/11/2010	35	4.60754410
6/11/2011	36	4.60754410
12/11/2011	37	4.60754410
6/11/2012	38	4.60754410
12/11/2012	39	4.60754410
6/11/2013	40	<u>4.60754410</u>

Total

170.06026352



APPENDIX A

PHILLIPS PETROLEUM COMPANY  
LEASE OF  
275 COVERED HOPPER FREIGHT RAILCARS

DEFINITIONS RELATING TO THE OPERATIVE DOCUMENTS

The definitions stated herein equally apply to both the singular and plural forms of the terms defined. Except as expressly provided herein, reference herein to any agreement means such agreement as amended, supplemented and modified from time to time in accordance with the applicable provisions thereof.

"AAA" has the meaning set forth in the definition of the term "Appraisal Procedure" set forth herein.

"Affiliate", with respect to a specified Person, means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For the purposes of this definition, "control" when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"After-Tax Basis" means (a) with respect to any payment to be received by an Indemnitee (which, for purposes of this definition, shall include any Tax Indemnitee and, for purposes of the Tax Indemnity Agreement, the Lessor (as defined therein)), the amount of such payment supplemented by a further payment or payments so that, after deducting from such payments the amount of all Taxes (net of any current credits, deductions or other Tax benefits arising from the payment by the Indemnitee of any amount, including Taxes, for which the payment to be received is made) imposed currently on the Indemnitee with respect to such payments, the balance of such payments shall be equal to the original payment to be received and (b) with respect to any payment to be made by any Indemnitee, the amount of such payment supplemented by a further payment or payments so that, after increasing such payment by the amount of any current credits or other Tax benefits realized by the Indemnitee and resulting from the making of such payments, the sum of such payments (net of

such credits or benefits) shall be equal to the original payment to be made; provided, however, for the purposes of this definition, it shall be assumed that federal and state income taxes are payable by such Indemnatee at the marginal federal and state statutory corporate income tax rates specified in an Officer's Certificate of the Indemnatee as the rates applicable to such Indemnatee for the relevant period or periods, which Officer's Certificate shall be deemed conclusive for all purposes of the Operative Documents.

"Applicable Law" means all applicable foreign, U.S. federal, state and local laws, ordinances, statutes, rules, regulations, orders, injunctions, writs, treaties, decrees, licenses and permits of any governmental or political subdivision or agency thereof, or of any court, tribunal or other similar entity established by (or in lieu of) any of the foregoing, as any of the foregoing may be in effect from time to time.

"Appraisal Procedure" shall mean a procedure for determining any amount, value or period, upon which the Lessor and Lessee were unable or unwilling to mutually agree. Such procedure shall be commenced by the delivery of written notification either by the Lessee to the Lessor or by Lessor to Lessee that an appraisal is required under the Operative Documents with respect to such amount, value or period; provided, however, that, with respect to the Lessee, at least 60 days prior to the date by which Lessee is required to notify Lessor of its election either to extend the Term for a Renewal Term pursuant to Section 4(a) of the Lease or to exercise options to purchase the Equipment pursuant to Section 14(a)(i) or 14(c)(ii) of the Lease, the Lessee will notify the Lessor of its preliminary intent to make such an election and identify an independent appraiser satisfactory to Lessee for the purpose of conducting an updated appraisal. After notice is given pursuant to the preceding sentence, Lessor and Lessee shall thereupon consult for the purpose of selecting a mutually acceptable independent appraiser. If within 30 days from the date of Lessee's or Lessor's notice, Lessor and Lessee are unable to agree upon the appointment of a mutually acceptable independent appraiser, then, within 15 days of the end of such 30-day period, each of such parties shall appoint an independent appraiser, and such independent appraisers shall jointly choose a third independent appraiser within 10 days after the appointment of the later of such two independent appraisers. The determinations of the appraiser so chosen shall be given within 90 days of the appointment of the final appraiser. If such two independent appraisers cannot agree on a third independent appraiser within the allotted time period, such amounts, values or periods shall be determined by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association (or any organization successor thereto) (the "AAA") and administered by its New York City office

(or such other office of the AAA as the Lessor and Lessee may mutually agree) by a panel of arbitrators having experience with the valuation of equipment similar to the Equipment. Fees and expenses of the third appraiser or such arbitration appointed in connection with an Appraisal Procedure shall be borne equally by the Lessor and the Lessee.

"Appraiser" means Independent Equipment Company.

"Assignment of Purchase Agreement" means the Purchase Agreement Assignment, in the form of Exhibit D to the Participation Agreement, executed by Lessee and Seller in favor of Lessor and dated the Lease Commencement Date.

"Base Rate" means at the time of such determination the then current rate of interest announced by NationsBank of North Carolina, N.A., from time to time, as its "prime rate" or "base rate".

"Basic Rent" means the rent payable on each Basic Rent Payment Date throughout the Term pursuant to Section 3(b) or Section 4 of the Lease.

"Basic Rent Factors" means the Basic Rent percentages set forth on Exhibit C to the Lease, as the same may be adjusted from time to time pursuant to the Lease.

"Basic Rent Payment Date" means (i) during the Basic Term, each date on which Basic Rent is payable as set forth on Exhibit C to the Lease; and (ii) during any Renewal Term, (A) the date which is six months after the date on which such Renewal Term commenced and the last day of each sixth month period thereafter to and including the last day of such Renewal Term and (B) the last day of such Renewal Term.

"Basic Tax Assumptions" has the meaning set forth in Section 2 of the Tax Indemnification Agreement.

"Basic Term" has the meaning given in Section 3(a) of the Lease.

"Bill of Sale" means a full warranty bill of sale, in the form of Exhibit A to the Participation Agreement, with respect to all or a portion of the Equipment, executed by the Lessee in favor of the Lessor and dated the Lease Commencement date.

"Business Day" means any day other than a Saturday, a Sunday or a day on which commercial banking institutions in Bartlesville, Oklahoma; New York, New York; or Charlotte, North Carolina are authorized or required by law to be closed.

"Closing Date" means the date on and as of which the Participation Agreement (and all other Operative Documents then required to be executed and delivered) are executed and delivered.

"Code" means the United States Internal Revenue Code of 1986, as amended from time to time.

"Default" means any event or condition that with the giving of notice or lapse of time or both would become an Event of Default thereunder.

"Delivery Date" has the meaning set forth in Section 2(b) of the Participation Agreement.

"Dollars" and "\$" means the lawful currency of the United States of America.

"EBO Date" has the meaning given such term in Section 14(c)(i) of the Lease.

"Environmental Laws" means any and all Applicable Laws relating to: (a) emissions, discharges, spills, releases or threatened releases of pollutants, contaminants, Hazardous Materials (as hereinafter defined), materials containing Hazardous Materials, or hazardous or toxic materials or wastes into ambient air, surface water, groundwater, watercourses, publicly or privately-owned treatment works, drains, sewer systems, wetlands, septic systems or onto land; (b) the use, treatment, storage, disposal, handling, manufacturing, transportation, or shipment of Hazardous Materials (as defined below), materials containing Hazardous Materials or hazardous and/or toxic wastes, material, products or by-products (or of equipment or apparatus containing Hazardous Materials), or (c) pollution or the protection of human health or the environment, including, but not limited to, the following: the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., as amended from time to time ("HMTA"), the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended from time to time ("RCRA"), CERCLA, the Clean Water Act, 33 U.S.C. § 1251 et seq., as amended from time to time ("CWA"), the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended from time to time ("CAA") and/or the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as amended from time to time ("TSCA").

"Equipment" means, all of the Items of Equipment collectively.

"Equipment Cost" means, as of the Lease Commencement Date an amount equal to the sum of (A) the purchase price of \$47,877.00 per Item of Equipment, totalling \$13,166,175.00 for all of the Equipment (inclusive of estimated freight charges for

delivery of the Equipment), (B) any freight charges for delivery of the Equipment in excess of the estimated charges contemplated in (A) above, and (C) interest on the purchase price of the Freight Cars then and theretofore delivered to Lessor and the freight charges referenced in clause (B) from the date on which such Items of Equipment are delivered to Lessor (as evidenced by a fully executed Bill of Sale) to the Lease Commencement Date, at a rate equal to the Federal Funds Rate, calculated on the basis of a 365-day year.

"Event of Default" has the meaning given such term in Section 16 of the Lease.

"Event of Loss" means any of the following events with respect to the Equipment or any Item of Equipment:

(i) the actual or constructive total loss of such property or damage thereto which, in the Lessee's opinion, renders repair uneconomical or which renders such property permanently unfit for normal use for any reason whatsoever other than obsolescence;

(ii) the confiscation, condemnation, requisition, seizure, forfeiture, purchase of, or other taking of title to or use of, such property by any governmental or purported governmental authority for a period in excess of the lesser of 180 days and the balance of the Term; or

(iii) the theft or disappearance of such property which shall have resulted in the loss of possession of such property by Lessee or any sublessee thereof for a period in excess of the lesser of 180 days and the balance of the Term.

"Fair Market Renewal Term" means a period commencing at the end of the Basic Term, the Initial Fixed Rate Renewal Term or any Fixed Rate Renewal Term and ending, subject to the other provisions of Section 4 of the Lease, on the date specified by the Lessee pursuant to Section 4(c) of the Lease, during which the Equipment may be leased for Fair Market Rental Value as permitted by Section 4(a) of such Lease, or such shorter period as may result from earlier termination of such Lease.

"Fair Market Rental Value" or "Fair Market Sales Value" means, with respect to the Lease and the Equipment or any part thereof leased thereunder, the value in Dollars which would be obtained in an arm's-length transaction between an informed and willing lessee-user or buyer-user (other than a lessee currently in possession or a used equipment dealer) under no compulsion to lease or buy, as the case may be, and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell, as the same shall, if the parties are otherwise

unable or unwilling to agree on such value, be determined pursuant to the Appraisal Procedure. In determining Fair Market Rental Value or Fair Market Sales Value, it will be assumed that the Equipment or part thereof is unencumbered by the Lease and is otherwise in the condition, location and overhaul status in which it is required to be returned to Lessor pursuant to Section 13 of the Lease (except that a determination of Fair Market Sales Value for purposes of Section 17(c) or (d), but not Section 17(e), of the Lease shall be based on "as-is, where-is" condition) and that Lessee has removed all Parts which it is entitled to remove pursuant to the sixth sentence of Section 8(c) of the Lease.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal for each day during such period to the sum of: (x) the near closing offer rate on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by The Wall Street Journal, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Lessor from three Federal funds brokers of recognized standing selected by it plus, unless otherwise provided in the Operative Documents, (y) one half of one percent (.5%).

"Fixed Rate Renewal Term" means a period commencing at the end of, in the case of the Initial Fixed Rate Renewal Term, the Basic Term or a Fixed Rate Renewal Term and ending, subject to the other provisions of Section 4 of the Lease, on the date specified by the Lessee pursuant to Section 4(c) of the Lease, during which the Equipment may be leased as permitted by Section 4(a) of such Lease, or such shorter period as may result from early termination of such Lease.

"force majeure" means an act of God; strike, lockout, or other industrial disturbance; act of the public enemy; war; blockade; public riot; epidemic; landslide, lightning, earthquake, fire, storm, flood, explosion, washout or other natural disaster; any action, order or regulation by any governmental authority; and any other event, matter or cause, whether or not of the same class or kind as set forth above, which shall not be reasonably within the control of the party affected thereby.

"Hazardous Materials" means (i) hazardous materials, hazardous wastes, and hazardous substances as those terms are defined under any Environmental Laws; (ii) petroleum and petroleum products including crude oil and any fractions thereof; (iii) natural gas, synthetic gas, and any mixtures thereof; (iv) asbestos and/or any material which contains any hydrated mineral silicate, including, but not limited to, chrysolite, amosite, crocidolite, tremolite, anthophyllite and/or actinolite, whether

friable or non-friable; (v) polychlorinated biphenyls ("PCB's"), or PCB-containing materials, or fluids; (vi) any other hazardous radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; and (vii) any substance that, whether by its nature or its use, is subject to regulation under any Environmental Law. Lessor and Lessee acknowledge and agree that nothing contained in this definition shall be construed to impair or limit Lessee's right to use the Equipment in the manner set forth in Section 6(c) of the Lease.

"Indemnatee" has the meaning set forth in Section 11(a) of the Participation Agreement.

"Initial Fixed Rate Renewal Term" means the period commencing at the end, subject to the other provisions of Section 4, of the Basic Term immediately following the Basic Term and ending on the date specified by the Lessee pursuant to Section 4(c) of the Lease, during which the Equipment may be leased as permitted by Section 4(a) of such Lease, or such shorter period as may result from earlier termination of the Lease.

"ITC Amount" has the meaning set forth in Section 3(d)(iii) of the Lease.

"Item of Equipment" means (i) any one of the two hundred seventy-five (275) covered hopper freight railcars, each with 5,730 cubic feet, four compartments, 100 ton trucks, for the transportation of plastics, synthetic (other than liquids), which railcars are to be manufactured by Seller, originally delivered and leased under the Lease, as described and identified by the manufacturer's serial numbers on Schedule A to Lease Supplement No. 1 to the Lease, including any replacement covered hopper freight railcar substituted therefor in accordance with Section 9 of the Lease, and (ii) any and all Parts which from time to time may be incorporated therein, installed thereon or attached thereto, and including any and all such Parts removed therefrom so long as title to such removed Parts remains vested in Lessor under the terms of Section 8 of the Lease.

"Late Payment" has the meaning set forth in Section 13 of the Participation Agreement.

"Lease" means the Lease Agreement, in the form of Exhibit B to the Participation Agreement, by and between Lessor and Lessee relating to the lease of the Equipment, as the same may be amended from time to time (including each related Lease Supplement).

"Lease Commencement Date" has the meaning set forth in Section 2(b) of the Participation Agreement.

"Lease Expiration Date" has the meaning given such term in Section 14(a)(i) of the Lease.

"Lease Supplement" means each of the Lease Supplements, substantially in the form of Exhibit A to the Lease, entered into between Lessor and Lessee for the purpose of leasing the Equipment, including any amendment thereto entered into subsequent to the Lease Commencement Date.

"Lessee" means Phillips Petroleum Company, a Delaware corporation, and its successors and permitted assigns.

"Lessee Person" shall have the meaning set forth in the Tax Indemnification Agreement.

"Lessor" means the NationsBanc Leasing Corporation of North Carolina, a North Carolina corporation, and its successors and permitted assigns.

"Lessor's Liens" means any Liens arising as a result of claims against Lessor which are in violation of, or are not related to the transactions contemplated by, the Operative Documents.

"Lien" means any mortgage, pledge, lien, charge, encumbrance, lease, adverse possession, exercise of rights, security interest, charge, easement, servitude or claim of any kind, including, without limitation, any arising under any conditional sale or other title retention agreement.

"Loss Payment Date" has the meaning set forth in Section 9(a)(i) of such Lease.

"MACRS Deductions" has the meaning set forth in Section 2(b) of the Tax Indemnification Agreement.

"Moody's" means Moody's Investors Service, Inc.

"Net Economic Return" means the net after-tax multiple investment sinking fund yield, utilizing the same assumptions (other than, in the case of an adjustment pursuant to Section 3(d) of the Lease, assumptions that are incorrect as a result of the event giving rise to such adjustments) as used by the original Lessor in making the initial computations of Basic Rent and Termination Values.

"Net Present Value of Rents" means the net present cost to the Lessee of all unpaid Basic Rent payments during the Term, discounted to the time of calculation at the Base Rate.

"Officer's Certificate" means, as to the Lessor and Lessee, a certificate signed by the Chairman, the Vice Chairman,



the President, any Vice President, any Assistant Vice President, the Treasurer or any Assistant Treasurer, the Secretary, or any Assistant Secretary.

"Operative Documents" means, collectively, the Participation Agreement, the Bill of Sale, the Lease, any Lease Supplement, the Assignment of Purchase Agreement, and the Tax Indemnification Agreement and all exhibits, appendices and attachments thereto.

"Optional Part" has the meaning set forth in Section 8(c) of the Lease.

"Overdue Rate" means 1% above the Base Rate, but in no event greater than the maximum rate of interest permitted under Applicable Law.

"Participation Agreement" means the Participation Agreement, dated as of March 30, 1993, among the Lessee and the Lessor, as the same may be amended, modified or supplemented from time to time.

"Parts" means any and all appliances, parts, instruments, appurtenances, accessories, furnishings, seats, and other equipment of whatever nature (other than temporary replacement parts as provided in Section 8 of the Lease) which may from time to time be incorporated or installed in or attached to any Item of Equipment, exclusive of any items leased by Lessee from third parties and not required in the operation of such Item of Equipment.

"Payment Date" means each Basic Rent Payment Date.

"Permitted Liens" with respect to a Lease, has the meaning given such term in Section 11 of the Lease.

"Person" means an individual, partnership (limited or general), corporation, business trust, joint stock company, limited liability company, limited liability partnership, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

"Pricing Assumptions" means the pricing assumptions set forth on Schedule II to the Participation Agreement.

"Purchase Agreement" means the Purchase Agreement, in the form of Exhibit B to the Assignment of Purchase Agreement, between Seller and Lessor relating to the sale to Lessor of the Equipment and the assignment of warranties with respect thereto, as the same may be amended, modified or supplemented from time to time.

"Rate Setting Date" has the meaning set forth in Section 3(d)(iii) of the Lease.

"Reasonable Basis" for a position shall exist if tax counsel may properly advise reporting such position on a tax return in accordance with Formal Opinion 85-352 issued by the Standing Committee on Ethics and Professional Responsibility of the American Bar Association.

"Regulations" means the Treasury Regulations, including proposed or temporary regulations, as amended from time to time, promulgated under the Code by the United States Treasury Department.

"Related Indemnatee" has the meaning set forth in Section 15(a) of the Participation Agreement.

"Renewal Term" means any of the Initial Fixed Rate Renewal Term, a Fixed Rate Renewal Term or a Fair Market Renewal Term.

"Rent" means Basic Rent and Supplemental Rent.

"Replacement Item of Equipment" means an item of equipment of the same type and capacity that has a fair market value and estimated remaining useful life at least equal to, and is in as good operating condition as, the Item of Equipment that is being replaced, assuming such Item of Equipment was in the condition and repair required by the terms of the Lease and which shall be substituted for such Item of Equipment in accordance with Section 9 of the Lease.

"S&P" means Standard & Poor's Corporation.

"Securities Act" means the Securities Act of 1933, as amended, of the United States of America or any subsequent legislation that amends, supplements or supersedes such act.

"Seller" means ACF Industries, Incorporated, a corporation organized under the laws of New Jersey.

"Significant Authority" means a basis in law and fact in favor of a position asserted that is substantial (although not necessarily more likely than not to prevail) when compared to the law and fact to the contrary.

"Subsidiary" of any designated corporation means any corporation of which such designated corporation owns directly or indirectly, a majority (in number of votes) of the outstanding voting shares. For the purpose of this definition, the term "voting shares" shall mean shares having, in the absence of any contingencies, voting power for the election of directors.

"Substantial Authority" means substantial authority within the meaning of section 6662 of the Code and the Regulations thereunder.

"Summary of Terms and Conditions" means the Summary of Terms and Conditions attached as Exhibit A to the commitment letter from the Lessee to the Lessor dated February 16, 1993.

"Supplemental Rent" means, with respect to a Lease, all amounts, liabilities, and obligations (other than Basic Rent) that Lessee assumes or agrees to pay under the Operative Documents to the Lessor or any other Person whether or not designated as Supplemental Rent, including, without limitation, Termination Value payments.

"Tax" or "Taxes" means any and all fees (including, without limitation, license, documentation and registration fees), taxes (including without limitation income, gross receipt, sales, rental, use, turnover, value added, property (tangible and intangible), excise, ad valorem, service and stamp taxes), licenses, levies, imposts, duties, recording charges or fees, charges, assessments or withholdings of any nature whatsoever, together with any and all assessments, penalties, fines, additions and interest thereon.

"Tax Indemnification Agreement" means the Tax Indemnification Agreement, in the form of Exhibit F to the Participation Agreement, between Lessee and Lessor, as the same may be amended, modified or supplemented from time to time.

"Tax Indemnitee" shall have the meaning set forth in Section 11(1) of the Participation Agreement.

"Taxable Entity" means a Person that is not a Tax Exempt Entity.

"Term" has the meaning given such term in Section 3(a) of the Lease.

"Termination Date" has the meaning given such term in Section 15(a) of the Lease.

"Termination Value" for an Item of Equipment as of any Termination Value Determination Date or Termination Date means an amount determined by multiplying Equipment Cost by the Termination Value Factor opposite the Loss Payment Date that is the Termination Value Determination Date or Termination Date.

"Termination Value Factors" means the Termination Value percentages set forth on Exhibit B to the Lease, as the same may be adjusted from time to time pursuant to the Lease.

"Transaction Costs" means all of the out-of-pocket costs, fees and expenses, up to \$200,000, incurred by the Lessor in connection with the negotiation, preparation, execution, delivery, filing and recording of the Operative Documents and the transactions contemplated thereby, including, without limitation:

(i) the fees, expenses and disbursements of Hunton & Williams, special counsel for the Lessor; and

(ii) the fees, expenses and disbursements of Donelan, Cleary, Wood & Maser, special ICC counsel for the Lessor; and

(iii) the cost of the appraisal referred to in Section 3(e)(ii) of the Participation Agreement.

"Treasury Note" has the meaning set forth in Section 3(d)(iii) of the Lease.

"UCC" means the Uniform Commercial Code as adopted in any applicable jurisdiction.